

A GENERAL TREATISE

O F

Naval Trade and Commerce,

As founded on the

LAWS and STATUTES of this Realm.

VOL. II.

Containing the following Heads, viz.

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| I. Of Bills of Exchange, Money and Bankers. | X. Of Letters of Marque and Reprisal, and of Restitution. |
| II. Of Letters Patent, and Monopolies. | XI. Of Privateers and Capers. |
| III. Of Trading Companies, the Merchant Adventurers, <i>Turkey Company, &c.</i> | XII. Of Cruizers and Convoys at Sea. |
| IV. Of the Company of the Royal Fishery, and <i>Greenland Company.</i> | XIII. Of Piracies, Pirates and Sea-Rovers. |
| V. Of the <i>Royal African Company of England.</i> | XIV. Of Safe-Conducts and Protections, Passports, &c. |
| VI. Of the <i>East-India Company</i> of Merchants. | XV. Of Leagues and Truces. |
| VII. Of the <i>South-Sea Company.</i> | XVI. Of Treaties of Commerce with foreign States. |
| VIII. Of other Traders, and of Brokers and Stock-jobbing. | XVII. Of Plantations abroad. |
| IX. Of Imbargoes on Ships, and Quarantine. | XVIII. Of Factors, Agents and Supercargoes. |
| | XIX. Of Consuls and Embassadors. |
| | XX. Of the Admiralty Court and Jurisdiction, &c. |

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~~THE SECOND VOLUME~~

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A GENERAL

A GENERAL
LAW-TREATISE
 OF
 NAVAL TRADE and COMMERCE.

CHAP. I.

Of Bills of Exchange, Money and Bankers.

EXCHANGE is a Commerce of Money, or a bartering or exchanging of the Money of one City or Country for that of another, performed by an Instrument in Writing, called a Bill of Exchange.

The Exchange for Money is of great Antiquity; among the *Romans* it is said to have been in Use upwards of Two Thousand Years: And as Money was first invented, to avoid the tedious Carriage of Commodities up and down, and from one Country into another; upon like Consideration, when other Nations imitating the *Romans*, erected Mints and

made Moneys, Exchange by Bills for Money was devised, not only to avoid the Danger and Adventure thereof, but also its troublesome Carriage, and to prevent the Exportation of Money.

And thus Kingdoms and Countries having by their Sovereign Authorities coined Moneys, they appointed a certain Exchange, for the Permutation of the various Coins in divers Countries, without any Transportation of the Coin; but giving *Par pro pari*, or Value for Value, with a certain Allowance to be made the Exchangers for accommodating the Merchants: And the common Exchangers in *England* were those constituted by our several Kings, who having received Money here, were to remit by Exchange the like Sum to be paid in another Kingdom. In order to which, King *Edw. 3.* by a Law made in his Reign, caused Tables to be set up in most of the general Marts or Ports of this Kingdom, declaring the Values of all or most of the foreign Coins of those Places abroad where his Subjects had Correspondence or Commerce, and what Allowances should be made for having Money remitted to such foreign Countries.

There have been four Manner of Exchanges practised abroad: For besides the *Common Exchange* before particularly mentioned, there was *Exchange real*, when Moneys were paid to the Exchanger, and Bills were drawn, without naming the Species, but according to the Value of the divers Coins; to be repaid the same in Money in some other Country, according to the Price agreed upon between

tween the Officer and Deliverer, to allow or pay for the Exchange of the Money and Loss of Time. Then there was an Exchange called *Dry Exchange*, being unlawful and usurious, by extraordinary Protests of Bills, &c. drawn to be paid by a feigned Person, whereupon the Merchant was to pay Exchange and Re-exchange to the Banker who furnished the Money: And a *fictitious Exchange* hath been made Use of to the same Purpose, but more pernicious to the Honest Trader; which two last Exchanges were prohibited here by * Statute.

And it has been observ'd concerning Exchange, that Money in general is divided into two Sorts, imaginary and real: By imaginary Money, is understood all the Denominations used to express any Sum of Money which is not the just Value of the real Species: And by real Money, is meant any real Species current in this or any other Kingdom; defin'd to be a certain Quantity of Metal, coined by the Authority of the State, and passing at a certain Price by Virtue of the said Authority, and of its own intrinsic Value; such as a Guinea, a Crown, Shilling, &c. The Metals of which this Money is produced, are Gold, Silver, and Copper: Such is the Quality of fine Gold, (by reason of the equal Proportion of the four Elements therein) that the Fire doth not consume it, nor does it need Fire to be made what it is, as

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other

* Stat. 3 Hen. 7. cap. 6. See *Lex Mercat.* 261, 262, 269, &c.

other Metals do; there is no Rust that doth diminish the Goodness thereof, or waste its Substance; but the Spirit of it may by Art be extracted, and without that the Body can never be molten. Silver is of a contrary Nature to Gold, the Sulphur of it is white and corrupt, and falling away; and therefore the Allay of Copper is done, for Preservation of Silver.

The true Exchange for Moneys by Bills of Exchange, used at this Day in *England*, is according to the *Par*, which is Value for Value; so that our *English* Exchange is grounded on the Weight and Fineness of our own Money, and the Weight and Fineness of that of other Countries, agreeable to their several Standards, and proportionable in their Valuation, which being justly and truly made, reduces the Price of Exchange to a Sum certain, for exchanging of Moneys to any Nation or Country whatsoever: As for Example, if one receives 100 *l.* in *London* to pay 100 *l.* in *Exeter* in our own Kingdom, this is by the *Par*; but if it be to pay the 100 *l.* at *Paris*, there the Party is to examine and compare the *English* Weight with the Weight of *France*, and the Fineness of our *Sterling* Standard with the Fineness of the *French* Standard; and if that at *Paris* and that at *London* differ not in Proportion, then the Exchange may run at one Price, taking the Denomination according to the Valuation of the Moneys of each Country.

But here if the Weight and Fineness of the Money exchanged differ, the Price of Exchange accordingly rises or falls; and the
same

same may be easily known, by knowing and examining the real Fineness of a *French* 5*s.* Piece, and an *English* one, and the Difference which is to be allowed for the Want of Fineness or Weight therein, which is the Exchange, and so accordingly for any Moneys of any other Country; the which is called *Par*, or giving Value for Value. For by the *Par* of real Money is understood, the Equality of the intrinsic Value of the real Species of any Country, with those of another: And so a *French* Crown is not upon a *Par* with ours; the Specie is equal to our Four Shillings and Six Pence only.

This Course of Exchange is however of late Years abused, and Moneys are become a Merchandize that over-rule Commodities, and rise and fall in Price according to the Plenty and Scarcity of Coin: And some are of Opinion, that there can be no certain Rate set on the *Par* in Exchange, to answer justly the Value of the Coins of foreign Parts, by Reason of the great Diversity of them, and of their intrinsic Values. And it is said, there is not at this Time any peculiar or proper Money to be found in Specie, whereupon outland Exchanges can be grounded; therefore all Foreign Coins are called imaginary.

As Money is the common or publick Measure of Things, between Man and Man within the Realm, so is Exchange for Money between us and Merchants in other Countries, for all Commodities bought and sold: Tho' it must be confess'd, that this Measure of Exchange between us and foreign Nations is very tender and delicate. And the Difficulty of it

proceeds from the Payments of Bills of Exchange beyond the Seas; which are made by Coin upon the Valuation of it, at the Pleasure of Princes, in some Countries arbitrary, whereby their Money is not proportionably valued: But altho' the foreign Coins beyond the Seas are received at a higher Rate than their Values, yet they should not be so taken in Payment; because the Commodities of the Realm are or ought to be sold agreeable to the Price of Exchange, which countervails the same according to their enhancing of Coins, or embasing thereof by Allay or Copper. The Eastern or Northern Nations keep the Prices of their Exchanges high, above the Valuation of their Moneys, so that they have no Trade but only for Goods and Commodities; by which Means they have prevented the over-ballancing of foreign Goods with theirs, as also the exporting of their Moneys; and this Remedy is the only one effectual in these Cases.

And 'tis worthy observing, that the Moneys in *Europe*, which have their ebbing and flowing, sufficiently shew their Operation upon Commodities, in making the same dear or cheap, in Proportion to the Plenty or Scarceness thereof: But Exchange hath a contrary Way of working; for when Money is plenty it makes a low Exchange, and when scarce it maketh the Price to rise, which is of great Consideration. True it is, that a Statute Law of this Kingdom, 14 *Rich. 2.* was made for three special Causes: 1. For the advancing of the Price and Sale of our native Commodities. 2. To prevent the over-ballancing of foreign

foreign Commodities. 3. To preserve the Moneys within the Realm: But the Remedies have proved defective, by mistaking the efficient Cause thereof.

For Merchants both *English* and Strangers, have by this Statute an Ability given them by Exchange to take up Money here, and to deliver a Bill of Exchange for it payable beyond the Seas, and can send over the Money in Specie, and be thereby great Gainers: In-
somuch that if a Man receives here One hundred Pieces of 20s. he may send ninety Pieces to pay his Bill of Exchange, and put ten Pieces in his Pocket for an Overplus and Gain; and the like may be done by making over Money from beyond the Seas to be paid here by Exchange, which being received, hath been transported with fifteen upon the Hundred Advantage, in two Months Time. Tho' the Stat. 1 *Rich. 2. cap. 9.* says, that foreign Merchants shall not make over the Money they receive for Goods by Exchange.

Exchange is properly made by Bills, when Money is delivered simply here in *England*, and Bills are received for the same, to have the Payment thereof in another Country, or being delivered abroad is to be receiv'd here at a certain Price pursuant to the Agreement of the Parties; whereof Merchants have the only and whole disposing, and buy and sell their Commodities beyond Sea accordingly. At *London* all Exchanges are made upon the Pound Sterling of 20s. and 12d. to the Shilling; for *Germany*, the *Low Countries*, and other Places of Traffick; and for *France* on the *French Crown*; for *Italy*, *Spain*, and some

other Places, on the Ducat; and for *Florence*, *Venice*, and Places in the *Streights*, commonly by the *Dollar* and *Florin*.

The Difference of the Times of Payment alters the Price of Exchanges, according to the Time, commonly after Twelve, Fifteen, or Twenty in the Hundred by the Year: And as to Time, Bills are drawn payable, either at Sight, or a Time certain, single, double, or treble Usance. The taking and delivering Money at Sight, binds the Taker up of the Money to give his Bill of Exchange on his Friend, Factor or Servant, to pay upon Sight of it, or within three, four, or more Days, the like Sum as hath been taken up; after such a Rate the Pound, Dollar, Ducat or Crown in foreign Coin, either according to the Valuation of Moneys, or current Money for Merchandize, which is more ordinarily used.

The second Time of Payment, called Usance, is known or taken to be the Compass of one Month, when 'tis single, to be computed from the Date of the Bill, and governed according to the Custom of the Place where these Exchanges do run: And the third Time of Payment, which is called double or treble Usance, is either Two or Three Months; and sometimes Exchanges are made upon the half Usance. But considering the Wind and other Hinderances, it is oftentimes better to limit so many Days after Sight in Bills of Exchange, and to send the same by Sea and Land, with Letters of Advice. In computing of Usances, from the 20th of *February* to the 23d of *March*, is one Usance; and from the

23d of *March* to the 22d of *April*, is another *Ufance* : And if a *Bill of Exchange* be dated the last of *February*, payable at treble *Ufance*, it will be due the last Day of *May*, and not the 28th of that Month as some imagine, because *February* hath but 28 Days. Fifteen Days is half *Ufance*.

Ufance from *London* to and from *Middleburgh*, *Amsterdam*, *Antwerp*, *Bruges*, *Rotterdam*, *Lisle*, *Roan* and *Paris*, is generally one Month's Time from the Date of the *Bill of Exchange* : *Ufance* from *Amsterdam* to *Rome*, *Genoa*, *Venice*, *Naples*, *Palermo*, *Lucca*, *Sevil* and *Lisbon*, is accounted generally two Months from the Date, &c. and from *London* to *Florence*, *Venice*, *Leghorn*, *Zant*, *Aleppo* and *Lucca*, the *Ufance* is sometimes three Months from the Date of the *Bill*. But the *Bills* for these Places may have a larger or shorter Time, in some Cases ; for there is no direct Certainty therein, but only that single *Ufance* is a Month, double *Ufance* two Months, &c.

It is said by Writers, that *Exchange* is the most mysterious Part of the Art of Merchandizing and Traffick, grounded upon Custom and Experience ; and the *Bill of Exchange*, by which it is done, and which contains only two or three Lines writ on a small Piece of Paper, being solemnized by a numerous Consent of Traders, hath more Respect than any other Bills, and is so noble and excellent, that by the Law of Merchants it is equivalent to any Specialty or Bond, tho' it be not sealed, or delivered in the Presence of Witnesses : And this is owing to its punctual and precise Payment, for Support of the Credit of the Parties

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in Trade, and as it carries with it a commanding Power to do the same.

All Bills of Exchange for *Germany, Spain, Italy, France, the Low-Countries, Portugal,* or any other Places between them, to and from Place to Place, do not differ in the Form, but in the Manner of the Moneys to be paid in Bank, or out of the Bank, or in such a Fair or Mart, at such Times and in such Money according to the respective Countries: But the *Italians* and *Dutch* write the Directions of their Bills of Exchange, on the Middle on the Backside; and the *French* commonly write their Direction of Bills in the Inside of the Bill, underneath on the left Hand, which is conceiv'd to be the best Way. At *Hamborough* and *Strasburgh* in *Germany*, they write the Old Stile as they do here in *England*; but in all other Places (except the *English* Plantations) they write their Bills, &c. New Stile, which is Ten Days before us.

At *Venice* and other Places abroad, where sometimes Bills of Exchange are given for Bills, they put in their Bills, for the Value exchanged with such a one, and not for the Value received; otherwise tho' the Money be received, the Bills must be answered. And in Exchanges, the *Italians* as well as Bankers have a Custom, that for Moneys taken by them, or for their Company, one of their Servants makes the Bills of Exchange, and he subscribes the Name of him, or of the Company for whom it was taken up; and the Master writes under the Bill in *Italian*, *Pay as it is said*: And this goes current among the Merchants, as any other Bill made
by

by the Parties own Hand, and all Proceedings thereupon are accordingly.

If a known Servant take up Money beyond Sea for his Master, and give his Bill of Exchange for it upon the said Master, the Master is liable to pay the same; for it was by his Credit the Money was taken up, and not by the Servant's: And he is to pay all by the Custom of Merchants, until he make a publick Declaration, denouncing his Servant, to the Brokers of Exchanges, &c. Also a Merchant may take Money by Exchange, in another Man's Name, or in his own Name and another's together, and subscribe his Name and that other Person's Name to the Bill of Exchange; and he whose Name is so used, is answerable for the Exchange, if it be proved that it was done, or the like used to be done by that other Party, with his Consent or Privity. And there is a Custom in some Countries, for one Merchant of Credit or Friend to send unto another, Bills of Exchange for Money, with the Names to whom payable in Blank, to be filled up at the Places where sent. *Lex Mercat.* 272.

A Bill of Exchange being in few Words, and of great Concernment in Trade, it ought to be writ very plain and legible, and without any Blots, mending, or altering of any Word thereof; and it is usual for Merchants to write the Sum that is paid, as well in Figures as in Words at length, to avoid Doubt or Scruple: But if there be any Difference therein, you ought to follow the Order and Certainty of the Words mentioned at length, which are in the Body of the Bill, and the
chief

chief Substance thereof. And a Bill of Exchange being drawn, there are commonly three Bills made of one Tenor for every Sum of Money taken up, that if one Bill be lost or miscarry, the other may take Place; but this Clause is inserted in the second, my first Bill of the same Date Persons and Sum not being paid; and in the third, my first and second Bills of the same Date and Contents not being paid. On this Account it is good for a Merchant to note down in his Book, the Name and Place of Abode of the Person who presents a Bill to be accepted, that after Acceptance he may give a ready Answer therein to him who shall present the second Bill to be accepted, &c. And on the other Hand it is necessary for any Merchant to whom Bills of Exchange are sent, to take Copies of them before they are offered and left for Acceptance.

In the drawing a Bill of Exchange for Money, the following Rules may be observed; first set down at the Top of the Bill the Date and Place where drawn, and in the same Line in Figures, the Sum for which the Bill is drawn; put down in the Bill the Time of Payment, the Quality of the Bill, the Name of the Person in whose Favour drawn; for what Sum of Money, and the Quality of it, the Price of Exchange, how the Value is received, and of whom, and what Advice the Person, on whom the Bill is drawn, is to expect; then subscribe your Name, and lastly direct it to the Person who is to pay the Bill.

And ordinarily there are four Persons requisite to be employed in remitting Money on Bills of Exchange; as the Party which delivers the Money, or the Banker; the Taker, or he who receives the same by Exchange, usually called the Drawer; the Party that is to repay the Money, or on whom the Bill is drawn; and the Person to whom the Money is made payable, or the Bill is sent to get it accepted, and receive the Sum, &c. But there may be Bills of Exchange made where three Persons, or only two are concern'd, especially Inland Bills, and such as a Man negotiates himself: When four Persons are used, the Drawer of the Bill is bound to the Deliverer; and the Acceptor is bound to the Party to whom the Bill is payable.

The right Way of Judging upon Bills of Exchange, is purely by the laudable Custom of Merchants, often reiterated over and over, by which Means the same hath obtained the Force of a Law: For Bills of Exchange are Things of great Moment as to Commerce, and therefore ought to be soberly judged and governed, as they have been generally approved of and adjudged in former Ages. But an Inland Bill of Exchange, has been said to be only in the Nature of a Letter; though an Outland Bill is more regarded in the Eye of the Law, because it is for the Advantage of Commerce with other Countries, which makes it of a more publick Concern. 1 *Rol. Abr.* 6.

If a Bill of Exchange be drawn at Sight, in Default of Payment at Presentation, the Bearer is forthwith to cause it to be protested for Non-payment: And the Bill being protested,

tested, is to be returned with the Protest, with all convenient Speed, to the last Indorser, if there be any; who is obliged to make good the Value, with the Exchange, Charges of Protest, &c. for all which he has his Remedy against the former Indorsors; and he against the Drawer of the Bill, who is answerable for the whole: But if the Bearer neglects to make such Protest, he himself shall be answerable. For the general Rule is, That though the Drawer is bound to the Deliverer 'till the Bill is satisfied, yet it is with this Proviso, that Protest be made in due Time, and a lawful and ingenious Diligence used for obtaining Payment of the Money; and it would be unreasonable, that the Drawer should suffer through his Neglect.

When any Protest is returned, for Want of Acceptance of a Bill payable at a Time to come, upon receipt thereof you must presently repair with the Protest to the Party to whom the Money was delivered on the Bill of Exchange, which is either the Drawer or Indorser; and upon Sight of the Protest, he must give Security for the Money taken up by Exchange, and be bound to repay the same, with the Re-exchange and Costs, in Case it be not paid at the Time by the Person on whom the Bill is drawn; which may be done by underwriting the Protest by another as Principal, in these Words; *I here under-written, do bind myself as Principal, according to the Custom of Merchants, for the Sum mentioned in the Bill of Exchange whereupon this Protest is made: Dated, &c.* If a Bill payable

payable at Ufance, be protested for Non-payment, the Drawer may claim the like Time of Ufance after, for Repayment thereof on the Re-exchange. *Lex Mercat.*

It has been held, that every Indorsement of a Bill of Exchange is a new Bill, and so long as the Bill is in Agitation, and such Indorsements are made, all and every of the Indorsors are liable as a new Drawer; and by the Law generally, every Indorsor of a Bill will be always answerable like the first Drawer thereof, and cannot be discharged by the Indorsee's Acceptance of the Bill, without an actual Payment: But by the Custom of Merchants, the Indorsee is to receive the Money of the first Drawer, if he can; and if he cannot, then it is understood that the Indorsor shall answer the Debt, and not before; as where the Drawer is Insolvent at the Time of the Indorsement, or upon Demand refuses to pay it, or cannot be found, &c. for the Indorsor is only a Warrantor for the Payment of the Drawer, on his Default: And if the Indorsee do not endeavour to receive it in convenient Time, and then the first Drawer becomes Insolvent, in such Case the Indorsor may be discharged, tho' the Money be not paid. 1 *Salk. Rep.* 132.

A Bill of Exchange made payable to *A. B.* for the Use of another Person, is said to be no more than a Trust, and the Right of the Money is in him, who may indorse the Bill, and thereby fix the Interest in the Indorsee, to charge the Drawer, &c. If the Drawer of a Bill fail, 'tis reasonable that the Creditor should resort to the first Indorsor to make it good:

good: And the Party has Liberty to bring his Action against any of the Indorsors of a Bill of Exchange, if it be not paid by the Acceptor; but if he sues the Drawer, he has waved his Liberty of prosecuting the Indorsor. 2 *Vent.* 309. 3 *Mod.* 86. *Skin.* 255, 410.

As to *Indorsements*, an Indorsor charges himself in the same Manner, as if he had originally drawn the Bill: And for Want of Payment, the Indorsee is to protest it, &c. To make the Indorsor answerable, the Drawer's Hand need not be proved, as the Indorsor is a new Drawer; tho' the Indorsee must make appear, that he demanded it of the first Drawer, or him upon whom it was drawn, and he refused Payment, &c. A blank Indorsement, without some further Act, does not actually transfer the Property of a Bill of Exchange; but the Person to whom it is indorsed, may fill up the Indorsement and charge the Indorsor, &c. For where one indorses his Name on a Bill, the Indorsee may make what Use of it he pleases, by Way of Assignment or Acquittance. 1 *Salk.* 126, 127.

Where Bills are drawn payable at some Days Sight, it is usual to leave them in the Hands of the Merchant, if he be a good Man, a convenient Time to be accepted, not exceeding twenty-four Hours, which Time is allowed him to consider whether he will accept the Bills or not; tho' among Merchants who know one another, sometimes Bills are left two or three Days for Acceptance, if the Post do not depart in the interim: And to prevent Forgeries and Impositions, it is not customary for Merchants to accept or pay
Bills

Bills of Exchange, without particular Advice from the Drawers. But in Strictness, a Bill may be immediately presented, and if not accepted, you may presently protest the same Day; and on a Post-day, the Presenter may demand an Answer, that if the Bill should not be accepted, he may have Time to cause the same to be protested, and return the Bill and Protest by the Post; wherein he is exactly to observe Orders, otherwise he runs all the Hazards.

And when the Time is expired on Bills of Exchange, by Custom three Days, called *Days of Grace*, are allowed for Payment in *England*, six Days in *Holland*, and ten in *France*; but it is nevertheless customary amongst substantial Dealers in most Countries, to pay such Bills at Presentation, or within twenty-four Hours after. If a Bill be not paid, within three Days after due, tho' it be forborn five or six Days, or more, Protest must be made for Non-payment; but it is safest made the third Day after the Bill is due, for fear of Insolvency of the Party who accepted it: And if a Merchant, having accepted a Bill, happen to be Non-solvent, or doth absent himself, Demand must be made by a Notary Publick for better Security; in Default of which, a Protest is to be made and sent away, that Security may be given by the Party which drew the Bill.

This *Protest*, when you cannot meet with the Party at home, and you can't find him on a diligent Inquiry, or any Body to pay the Money, must be made at his Dwelling-house, &c. and is to be made in the Day-

time, between Sun-rising and Sun-setting, and without tarrying till the last Hour, if it may be done otherwise. And a Protest of Bills of Exchange is a Sort of Summons, made to a Person to accept or pay a Bill, by such Officers as are for that End appointed by the Laws of the Country, with Protestation against the Refuser for Exchange, Re-exchange, Interest and all Charges, Damages, and Losses that may be sustained or occasion'd by such Refusal. The Use of the Protest is, to subject the Drawer to answer, in Case of Non-acceptance, or Non-payment of the Bill; being made in both Cases, wherein the Notary doth declare and protest against the Party in Words, that the Merchant intends to recover all Damages, Charges and Interest against the Maker of the Bill, or any other interested in the said Exchange, which he or the Deliverer of the Money beyond the Seas, or himself for others might sustain thereby; which must be declared in the said Protest by a sworn Broker of Exchanges, who gives Notice of the Price of Exchange to the Notary; and if there be hope of Payment, you may keep the Protest two or three Days in your Hands without Danger, or else send it abroad to be recovered of him that made the Bill of Exchange, and took up the Money there. *Lex Mercat.* 273.

On a Protest being made against the Party refusing, he need not make any Reply; but if he do, and withal desire the Notary to declare the same in the notarial Act or Protest which he makes for the Non-acceptation; then the Notary is to put it down in Writing accordingly, and deliver the same to the

Merchant to be sent beyond the Seas with all Expedition, so that the Deliverer of the Money there may take Notice of it, and secure himself of the Drawer of the Bill, if there be Cause for it. Tho' the Protest subjects the Drawer to answer on Non-payment, &c. yet the same doth not discharge the Party Acceptor, if once accepted; for the Deliverer hath now two Remedies, one against the Drawer, and the other against the Acceptor: And to entitle a Person to an Action at Law in *England* against the Party accepting, it matters not whether there be a Protest; but to entitle him to a Recovery against the Drawer beyond Sea or elsewhere, there must be a Protest before a Publick Notary.

Beyond the Seas the Protest of an accepted Bill for Non-payment, under the Hand of the Notary, is sufficient to shew in Court without producing the very Bill itself: But here in *England*, if a Bill be accepted, and a special Action grounded on the Custom, be brought against the Acceptor, at the Trial the Party Plaintiff must produce the Bill accepted, and not the Protest. Therefore, it is safe, that a Bill accepted should be kept, and only a Protest for the Non-payment be remitted abroad; but a Bill not protested for not Acceptance, must be remitted. *Molloy Jur. Marat.* 269.

To accept a Bill of Exchange, is to take upon one's self the Payment of the same, and he that accepteth the Bill, must pay it. The Acceptation of Bills, that are payable at a set Day, or at one or more Usances, after Date, &c. by the Custom of *Holland*, is commonly with the Expression simply of the Word ac-

cepted; but Bills of Exchange that are at some Time after Sight, are accepted with the Addition of the Time when they are seen, or presented, &c. If a Drawer is dubious, whether the Person upon whom he draws will accept his Bill, he may at the same Time get it recommended to some other Merchant, residing at the same Place; that in Case the other should refuse, he may do it. *Gen. Treat. Exchange.*

Upon Receipt of any Bill of Exchange, the Party is to go to the Person to whom directed, and present the same in order to his Acceptance: and on Tender of the Bill, he subscribes *Accepted*, or *Accepted by me A. B.* or being on the *Exchange*, says, *I accept the Bill, and will pay it according to the Contents:* These are an Acceptance. And if one Merchant having a right Understanding with another, say, *Leave your Bill with me, and I will accept it;* or, *Call for it To-morrow and it shall be accepted;* it obliges him as effectually by the Custom of Merchants, as if the Party had actually subscribed or signed it, tho' that be usually done. But if a Man says, *Leave the Bill with me, I will look over my Accounts between the Drawer and I, and call To-morrow, and accordingly the Bill shall be accepted;* this shall not amount to a compleat Acceptance: For the mention of his Accounts, was intended to see if there were Effects in his Hands to answer; without which perhaps he would not accept the Bill. And if the same be refused, the Party then must procure a Protest, and remit the same to the Deliverer of the Money, who is to resort to the Drawer for Satisfaction

tisfaction for the principal Costs and Damage.

If a Bill is drawn upon a Merchant in *London*, payable to a Person at double Usance, he is not bound in Strictness of Law to procure an Acceptance, but only tender the Bill when the Money is due : But Merchants who generally have generous Spirits will not surprize a Man, but will first procure an Acceptance, or leave the Bill for the Party to consider and give his Answer, and then give Advice of the same, and if the Money be not paid, then protest. Where a Bill of Exchange shall express, and put it to the Account of *A.* and the Letter of Advice concerning it says to *B.* on offering the Bill to be accepted, this must be protested against, for it cannot safely be paid, at least without running the Risque of an equitable Suit. See *Advice concerning Bills of Exchange.*

A Bill may be accepted for Part, for that the Party upon whom the same was drawn, had no more Effects in his Hands; and in this Case, after the Payment of such Part, there must be a Protest for the Remainder; yet some say it ought to go for Want of Acceptance to the whole. In Case a Bill of Exchange be made payable at Thirty Days Sight, and the Person to whom directed will not accept it to be paid at the exact Time, but at sixty Days Sight, &c. there the Party to whom the Bill is made payable, must protest for not accepting according to the Tenor, and then he may take the Acceptance offered: Nor can the Person so accepting, after he has subscribed the Bill for a longer Time, or the other Party

alter the same, altho' it is not according to the Tenor of the Bill; for by his Acceptance he hath made himself Debtor, and owns the Draught made upon him by his Friend, whose Right another Man cannot give away.

And this Case will admit of two Protefts, and perhaps three, as Things may happen: First, one Protest is to be made for Non-acceptance according to the Time. A second, for that the Money, being demanded at the Time mentioned in the Bill, was not paid. And a third Protest, if the Money is not paid according to that Time which the Acceptor subscribed or accepted. If a Bill be drawn upon a Man, who happens to be in the Country, and a Friend of his desires the Party not to protest it, and he will pay the same; it is good, and shall bind such Party. *Molloy* 267, 271. *Styles Rep.* 416.

A. draws a Bill upon *B.* and he being in the Country, *C.* an Acquaintance of his, hearing of the Bill, accepts it; the Party to whom the Money is to be paid, must make a Protest for Non-Acceptance of *B.* and thereupon he may take the Acceptance of *C.* and it shall oblige him to answer the Money: And before such Protest, such Acceptance of the other Person ought not to be taken. And if a Merchant draws a Bill, and there is a Protest for Non-Payment; if another Person declare, that he for the Honour of the Drawer will pay the Contents, and subscribes it, he is thereby obliged: In which Case, it has been practised, that the Party that received the Money, hath put his Name on the Back of the Bill; but the Receipt is sometimes taken on the Protest, which

which with the whole Proceeding done by the Notary, is sent to the Drawer by him who gave Honour to the Bill.

No Person, be it a Wife or Servant, can accept of a Bill of Exchange to bind the Master, without a lawful Authority to do it, as a Letter of Attorney or the like under Hand, unless it has been formerly and usually done by them in such Case, when the Master hath been out of Town; and he has approved of the same, and answered Payment: But if a Merchant to whom a Bill is payable, be absent, or sick, his Friend or Servant may cause a Protest to be made. And one Partner may accept for another; as if there be three Joint-Traders, for the common Stock and Benefit of all, and their Factor, or any other Person, draws a Bill upon them, the Acceptance of one will oblige the rest of the Company: In like Manner, as in drawing Bills, where there are Partners in Merchandize, the signing of one of them for Self and Company, obliges the other Partner to fulfil the Contents of the Instrument so signed, and he is equally bound with the other Party that did sign it. *1 Salk.* 126.

But where a Bill is drawn on two others jointly, it must have a joint Acceptance, otherwise it shall be protested; though if it be on two or either of them, then if it be accepted by one, it is pursuant to the Tenour of the Bill, and ought not to be protested but in Case of Non-Payment, and then the Person Acceptor is liable to an Action. A Factor of the *India* or *Turkey* Company draws a Bill on the same, and a Member accepts it, this may per-

haps make him answerable, but not another Member: So it is if ten Merchants shall employ a Factor at the *Canaries*, and the Factor doth draw a Bill of Exchange upon them all, and one of them accepts the Bill and then refuses Payment; this will not be obligatory on the rest: Though it is otherwise in Case of several Joint-Traders as above. *Winch. Rep.* 24, 25. A Bill of Exchange cannot be payable out of any certain Funds, or Stock of a Company, &c. *Trin. 10 Geo. 1.*

It is customary, for a Merchant to draw Money out of his Factor's Hands, to make a Bill of Exchange payable to some other Person, naming a Friend; and here if the Factor accept the Bill, he will be made to pay it. But if this Person whose Name is used, will deal unjustly, the Merchant is remediless, except he hath some Collateral Writing for the same. A Principal may countermand the Payment of his Bill to his Servant or Factor; which must be made and passed before a publick Notary, and by him notified to the Party who has accepted the Bill, and then it may be paid to some other Person. And if a Man pay a Bill of Exchange before it is due, and the Person to whom paid breaks before the Time of Payment mentioned in the Bill, it is conceived that the Party ought to answer the same to the Drawer: And the Reason given is, because the Drawer might have countermanded the same, or ordered the Bill to be made payable to another.

A Bill of Exchange when accepted, cannot be revoked by him who accepted it, though immediately after, and before the Money becomes

comes due, he hath Advice that the Drawer is broke. And Acceptance of a Bill after the Time of Payment is past, it has been held amounts to a Promise to pay the Money: But if a Bill of Exchange by contrary Wind, or other Cause, be so long upon the Way, that the Time limited by the Bill is expired, and being presented to the Party for Payment, he will not accept or pay for the same; then the Notary is to make a Protest for Non-acceptation, and the Non-payment.

If a Bill be accepted, and the Person who accepted the same happens to die before the Time of Payment, there must be a Demand of his Executors or Administrators; and in Default or Delay of Payment, a Protest is to be made, although it may fall out that the Money become due before there can be Administration, or a Probate of the Will of the Deceased be granted: This Delay is sufficient for protesting in Case of Non-payment; but, nevertheless, on demanding the Money, Security should be offered to save the Executors, &c. harmless. But on the other Hand, if the Party be dead to whom the Money is made payable, and the Money ready to be paid; a Protest ought not to go for not paying, 'till there is a Person that can give a legal Discharge; and if here the Notary make it, and the Party receives any Damage thereby, Action of the Case may lie against him. *Molloy*, 273.

Where a Bill being left with a Merchant to accept, he loses the Bill, or mislays the same that it is not to be found, the Party may insist upon a Note from the Merchant
for

for Payment, according to the Time limited in the Bill of Exchange; and if he refuses, two Protests must be made thereupon, one for Non-acceptance, and the other for Non-payment: And if a Note is given for Payment of the Money, and there be a Failure, in that Case there must be a Protest for Non-payment of the Note. And when a Possessor of any Bill by any Accident loses it, he is forthwith to cause Intimation to be made by a Notary Publick before Witneses, that the Bill is lost or mislaid; requiring that Payment be not made of the same to any Person, without his Privy. Also if any Bill of Exchange drawn in, or dated at and from any Place of this Kingdom, shall be lost or miscarry within the Time limited for Payment thereof, the Drawer shall give another Bill of the same Tenour; Security being given to indemnify him, in Case the Bill so lost be found again. *Stat. 9 & 10 W. 3. See Show. Rep. 164.*

A Protest is for the Benefit of the Drawer, to give timely Notice that the Bill is not accepted, &c. altho' it is to subject him to answer: And before the *Stat. 9 W. 3.* if a Bill was foreign, one could not resort to the Drawer to charge him for Non-acceptance, or Non-payment, without a Protest, and reasonable Notice thereof; but in Case of an Inland Bill, there was no Occasion for such Protest. On a Bill protested for Non-payment, after 'tis once satisfied to the Deliverer by the Drawer, he is discharged; and so is the Person upon whom drawn, as to whom the same was to be paid; tho' if he had accepted the Bill, here he
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would be accountable to the Drawer, by the Custom of Merchants. *Mod. Cases* 80.

Processes at Law concerning Bills of Exchange, are shorter than in any other Case; but no Remedy can be taken against either of the Drawers, Indorsors, or Acceptants, unless the Bills are duly protested: And not only the Possessors of Bills, but their Heirs, Executors, or Administrators, may sue the Parties concerned in a protested Bill of Exchange, and have speedy Justice. No Appeal lies to the superior Courts, 'till the Value of the Bill is actually deposited; and it is not necessary, as in other Causes, to make Proof of Acceptation by Witnesses, nor is the Party bound to alledge a particular Place of Demand, &c. But it must be set forth as Part of the Custom. And in most Countries, Execution of Body and Goods is the immediate Consequence on prosecuting a Bill of Exchange, against the Drawers and Indorsors, as well as the Acceptant. *Styles* 370.

A Bill drawn by a Merchant in *London*, payable by a Person residing beyond the Seas; by the Laws abroad it is assignable over from Merchant to Merchant; and the last Person may sue and recover upon an Acceptance. In this Kingdom there is a Difference between a Bill payable to *J. S.* or Bearer, and to him or Order; for a Bill payable to a Person, or Bearer, is not assignable, so as to enable an Indorsee to bring an Action, if the Drawer refuse Payment, because there is no such Authority given to the Party by the first Contract: But by a Bill drawn payable to a Person, or Order, an express Power is given

given to the Party to assign, and here the Indorsee may maintain an Action on it. Where a Bill is to be paid to *A. B.* or Bearer, if it be assign'd, an Assignee must sue in the Name of him to whom it was made payable, and not in his own Name: If it be made payable to him or Order, there the Assignee may sue in his own Name, because the Order must be made by Indorsement, &c. Also the latter is within the Custom of Merchants, and may be negotiated and assigned by Custom; but the former is not. 1 *Salk.* 126. 3 *Salk. Rep.* 67. *Vide Stat.* 3 & 4 *Annæ.*

When a Bill of Exchange is accepted, it is a good Ground for a Special Action on the Case, but it doth not make a Debt, &c. because the Acceptance is only a collateral Engagement. And it has been held, that a general Action *Indebitatus Assumpsit* will not lie on a Bill of Exchange, for want of a Consideration; for it is but an Evidence of a Promise to pay, which is but a *Nudum pactum*; and therefore the Party must bring a Special Action on the Custom of Merchants, or else a general *Indebitatus* against the Drawer, for Money by him received to the Plaintiff's Use. 1 *Salk.* 125. 1 *Vent.* 152. 2 *Show.* 9. Bills of Exchange between Merchants, are within the Statutes of Limitation to be sued in six Years, and not excepted out of that Statute, only Action of Account, &c. But Payment of Part of a Bill within the Time, being a fresh Act, avoids the Statute. 1 *Show.* 341.

If a Bill be indorsed, payable Part to another; the Contract, being entire, an Action will
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will not lie against the Indorfor, without shewing how the other Part is satisfied. But a Bill may be good by the Law of Merchants, tho' it be not brought within the Merchants Custom : On Assignments of Bills, the particular Custom of Merchants must be set forth ; and here it is said, the Custom of Merchants concerning Bills of Exchange, is Part of the Common Law. 1 *Salk.* 65. 1 *Show.* 317. 3 *Mod.* 226. *Carth.* 270.

A young Gentleman travelling abroad for better Education, &c. takes up Money there, and draws a Bill of Exchange on his Father at *London* ; this drawing of a Bill makes him a Merchant and Trader for that Purpose ; for most Persons have Bills directed to them, or payable to them, which must be all avoided if the negotiating a Bill will not oblige, &c. 1 *Show.* 127. Interest upon a Bill of Exchange may be due from the Day of Protest ; and on Bills payable on Demand, commences from the Time of Demand. *Mod. Cases* 167.

An Inland Bill of Exchange is of the following Form :

100*l.* *Sterling,* *London 10 May 1738.*

At Ten Days Sight pay this my Bill of Exchange to Mr. *C. D.* or Order, the Sum of One Hundred Pounds Sterling, for the Value here received by me of Mr. *E. F.* and place it to Account, as by Advice from,

Yours, &c.

To Mr. *G. H.* Merchant
in *Bristol.*

A. B.

A Foreign

A Foreign Bill of Exchange drawn upon a Merchant abroad :

Exchange 200l. for } London 10 May,
36s. 8d. Flemish per l. } 1738.

At Twenty Days Sight, pay this my first Bill of Exchange to Mr. C. D. Merchant, or Order, Two hundred Pounds Sterling, at Thirty-six Shillings and Eight-pence *Flemish*, for every Pound Sterling current Money in Merchandize, for the Value here received of, &c. and put the same to Account, as per Advice, from

Yours, &c.

To Mr. L. M. Merchant
 at Amsterdam.

A. B.

If the Bill of Exchange be on Account of a third Person, it is thus :

Exchange 300 Crowns, } London 10 May,
at, &c. per Crown. } 1738.

At Usance pay this my first Bill of Exchange to Mr. C. D. or Order, the Sum of Three hundred Crowns, at sixty *Sols Tournois* per Crown, and place to the Account of Mr. E. F. of *Amsterdam*, Merchant, Value receiv'd of the said C. D. as per Advice from,

To Mr. J. K. Banker
 in Paris.

Yours, &c.

A. B.

A Protest

A Protest of a Bill of Exchange.

First a Copy of the Bill here is to be made; and then the Person desiring the Protest, is to sign a Writing to this Effect :

Know all Men by these Presents, That I *C. D.* on, &c. last, at the usual Place of abode of the aforesaid *G. H.* demanded Payment of the Bill of which the above is a Copy, which the said *G. H.* did not pay, (or refused to accept) wherefore I the said *C. D.* do hereby protest the said Bill, dated, &c.

And then the *Notary Publick* draws the Protest in Manner following :

Know all Men by these Presents, That at the Request of *C. D.* Merchant, this Day of, &c. in the Year of our Lord 1738, I *T. S.* *Publick Notary*, sworn and admitted by Authority, did go to the Dwelling-house of Mr. *G. H.* upon whom the above mentioned Bill of Exchange is drawn, and shewed the Original unto the said *G. H.* demanding his Acceptance of the same; who answered me, that he could not accept the said Bill, by Reason of, &c. wherefore I the said *Notary* did protest, and do by these Presents protest as well against the said *A. B.* the Drawer, as against the said *G. H.* upon whom the Bill is drawn; as also against all other Persons, Indorsors or others therein concerned, for all Exchanges, Re-exchanges, Damages and Interests whatsoever, in the Presence of *W. L.* and *N. R.* called for Witnesses to this present Act :
Done

Done at my Office, &c. the Day and Year above written.

According to the Laws and Customs of *France*, any Bill of Exchange payable to a Person or Order, being *protested*, no Exchange shall be due by the Drawer, but for the Place whither the Remittance was made; and not for the other Places where it has been negotiated, (unless the Power of negotiating given by the Bill be indefinite and in general for every Place;) the Bearer being always to have his Recourse to the Indorsors, for Payment of the Re-exchange to the Places it hath been negotiated by their Order. *Gen. Treatise of Exchanges.*

Besides these Bills, Money may be had on Exchange by way of *Letters of Credit*, which are either general or special: The general Letter is open, directed to all Merchants and others, that shall furnish Moneys unto the Party's Factor, or such and such Persons; for Repayment of which, he binds himself to answer and pay all such Bills of Exchange as shall be drawn on him, upon Receipt of the Value by his Factor or other Person.

And if there be really Money advanced on this general Letter of Credit, and paid to such Factor or others, and Bills of Exchange are sent to the Party that sent the Letter, if he refuses to accept such Bills, yet according to the Custom of Merchants he is bound to pay them; because there was no Respect had to the Ability of the Taker up of the Money, but to him who gave his Letters of Credit: Though in such Case if an Action of Law be brought, the Custom as to that Point must be particularly alledged. And
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in the general Letter of Credit, he that writes it doth make Use of his Credit for his own Account and Concernments in Trade; so that there needs no more than such his Letter, to make him liable to repay what shall be so furnished: But in the particular Letter of Credit, he who writes the Letter doth it not to make Use of the Money himself, or to be employ'd for his own Use, but for the Use and Accommodation of some other Man. *Molloy 274. Lex Mercat. &c.*

The special Letter of Credit is when a Merchant, at the Request of any other Person, doth write his Letter of Credit, directed to his Factor, Agent, or Correspondent, giving him Order to furnish such a Man by Name with such a Sum of Money, and charge it to the Account of the Merchant that gives the Letter of Credit, and take Bills of Exchange or Receipts for the same: And it has been customary for him, on whose Intreaty the Letter was written, to give Security by Bond or otherwise, unto the Merchant for Repayment to him, his Executors or Assigns, of all such Money as shall be received by Virtue of the said Letter of Credit; and the Reason is, for that the Merchant, by his Letter stands sufficiently bound to his Correspondent.

Letters of Credit, if not complied with, are return'd to the Giver without any other Proceeding, unless it be where he is Debtor to the Party that did receive them, and given to be paid thereby; in which Case, Protest may be made, &c.

A particular Letter of Credit is thus made :

Mr. E. F. London, 10 May, 1738.

SIR, My last unto you was of the 15th of March, wherein I wrote you what was needful in Answer to yours of the 10th of the same Month ; and this serves chiefly to desire you to furnish and pay unto Mr. C. D. English Gentleman, to the Value of Two thousand Crowns, at one or more Times, according as he shall have Occasion for it, and request the same of you, taking his Receipt, or Bills of Exchange for the Moneys, which you shall so furnish him with, and put it to my Account ; and this my Letter of Credit shall be your sufficient Warrant for so doing.

To Mr. E. F. Merchant
at Madrid.

Yours, &c.

A. B.

A Conditional Bill of Credit may be drawn as follows :

This present Writing witnesseth, That I A. B. of London, Merchant, do undertake to and with E. F. of, &c. Merchant, his Executors and Administrators, That if he the said E. F. do deliver, or cause to be delivered unto C. D. of, &c. or to his Use, any Sum of Sums of Money amounting to five hundred Pounds of lawful British Money, and shall take a Bill under the Hand and Seal of the said C. D. (or an Acquittance under his Hand) confessing and shewing the Certainty thereof ; That then I, my Executors or Administrators, having the same Bill delivered to me or them, shall and will immediately, upon the Receipt of the same,

same, pay or cause to be paid unto the said *E. F.* his Executors or Assigns, all such Sums of Money as shall be contracted in the said Bill, at, &c. for which Payment in Manner and Form aforesaid, I bind myself, my Executors, Administrators and Assigns by these Presents. *In Witness, &c.*

There are likewise *Bills Obligatory*, or of *Debt*, between Merchants much used in some Countries of Trade; and the Persons to whom made, may go to another Man and buy other Commodities therewith, as it were with ready Money, the Time of Payment only considered, &c. But if a common Bill Obligatory be made beyond the Seas, by two or more Persons, as having bought a Commodity as Partners together, &c. wherein they bind themselves all as principal Parties or Debtors; yet every Man is but bound to pay his Part. On such a Joint Bill here in *England*, an Acquittance to one Debtor, will discharge the others.

These *Bills of Debt*, of Merchants abroad, on their buying Goods and Merchandize upon Credit, and which are binding to the Parties, &c. are made in this Form:

A Merchant's Bill of Debt obligatory.

I *C. D.* of the City of *Amsterdam*, Merchant, do by these Presents acknowledge myself to be indebted to *A. B.* of, &c. *English* Merchant, the Sum of six Hundred and ten Pounds of lawful Money of *Great Britain*, for divers Wares and Merchandizes this Day bought and receiv'd of him; which Sum of six Hundred and ten Pounds, I do hereby

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promise

promise and oblige myself, my Executors and Administrators, to pay unto the said *A. B.* or the Bearer hereof, within six Months next after the Day of the Date of these Presents. *Witness* my Hand the Day, &c.

*Inland Bills of Exchange and Promissory Notes,
by Statute.*

The Statute 9 & 10 *W. 3. cap. 17.* enacted, That all Bills of Exchange drawn in, or dated at and from any Place in this Kingdom, of the Sum of 5 *l.* Sterling, or upwards, upon any Person in *London*, or other trading City, Town or Place, drawn payable at a certain Time after the Date thereof, and in which Bills the Value shall be expressed to be received, may after their Presentation and Acceptance, (which Acceptance shall be by underwriting the same under the Parties Hands so accepting) and after the Expiration of three Days after the same shall be due, be protested by a Notary Publick, or in Default of such Notary, by any other substantial Person of the Place before two Witnesses, Refusal or Neglect being first made of due Payment; which Protest shall be made under a Copy of the said Bill, in the Form prescribed by the Act, and shall be sent or notified within fourteen Days after to the Party from whom the Bills were received, who (on producing such Protest) is to repay the said Bills with Interest and Charges from the protesting: And in Default of such Protest made and sent, or due Notice given thereof, the Person failing shall be liable to all Costs, Damages and Interest thereupon.

And

And the 3 & 4 *Anne*, cap. 9. ordains, that all Notes signed by any Person or Persons, Body politick or corporate, or by the Servant or Agent of any Corporation, Banker, Goldsmith, Merchant or Trader, usually intrusted to sign such Notes, whereby any such Person or Persons, &c. shall promise to pay to any other Person or Persons, or Order, or unto Bearer, any Sum of Money; the Money mentioned in such Note, shall be construed to be due and payable to the Persons to whom the same is made payable: And also such Notes, payable to such Person or Order, shall be assignable over in Manner as Inland Bills of Exchange are; and the Person, &c. to whom the Money is payable, may maintain an Action for the same, as they might upon such Bills of Exchange; and the Persons to whom such Note, so payable to Order, is assigned or indorsed, may maintain his Action against the Party who signed, or any who indorsed the same, as in Cases of Inland Bills, and recover Damages and Costs of Suit.

If the Party, on whom any Inland Bill of Exchange be drawn, refuses to accept the same, the Person to whom payable shall cause such Bill to be protested, as Foreign Bills; for which Protest shall be paid 2 s. and no more: But no Acceptance of any such Inland Bill shall charge any Person, unless it be under-written or indorsed; and if it be not so under-written or indorsed, no Drawer shall be obliged to pay Costs, Damages, or Interest thereon, if Protest be not made for the Non-acceptance thereof, and within fourteen Days after sent, or Notice given of it to

the Party from whom such Bill is received, or left in Writing at his usual Place of abode.

And where such Bill is accepted, and not paid within Three Days after due, Protest must be made and sent, or Notice given as aforesaid, to charge the Drawer with Costs, Damages, &c. Though no such Protest shall be necessary, except the Value shall be expressed to be received in such Bill; and the Bill be drawn for 20 l. or upwards: And there is a Proviso in the Act, that nothing therein shall discharge any Remedy any Person may have against the Drawer, Acceptor, or Indorfor of any Bill.

By this Act there is also a Clause, that if any Person accept or take such Bill of Exchange, in Satisfaction of any former Debt, it shall be esteemed a full Payment, if he doth not his Endeavour to get the same accepted and paid, and make his Protest, as aforesaid, either for Non-acceptance or Non-payment thereof. And before this Statute it was adjudged, where a Note was directed to a Merchant to pay so much to another Person for Value received, it shall be a good Discharge of the Debt, if the Bill be not returned back to the Drawer in Time; for keeping the Bill long, is Evidence that the Party agreed to take the Merchant as Debtor, *1 Show. Rep. 156.*

But if a Man gives a Bill or Note upon a Third Person to another in Payment, and he takes it absolutely; yet if the Drawer knew the Third Person to be breaking, or in a failing Condition, and the Receiver of the Bill uses all reasonable Endeavours to obtain Payment, but cannot, this is a Fraud and no Pay-

Payment : Though if a Person takes a Note, and after the same is payable makes no Demand, so that he might be paid if he had been diligent enough, there if the Party on whom the Bill is drawn fails, it is at the Peril of him who took it: Ruled in the Case of *Popley and Ashley. Modern Cases* 147.

There was a Debt of 50 *l.* due to a Man, who sent his Servant with the Debtor, to receive the Money of a Goldsmith, upon whom the Debtor had a Bill of 100 *l.* and he indorsed 50 *l.* on that Bill, and gave the Servant a Bill upon another Goldsmith for 50 *l.* and the next Day that Goldsmith broke; and thereupon the Master resorted to the first Goldsmith, who refusing to pay the Money, an Action was brought against him. It was here held, that the Act of the Servant shall not bind the Master, unless he acts by Authority of his Master; and therefore if a Master sends his Servant to receive Money, and he instead of Money takes a Bill, and the Master as soon as told thereof disagrees, he is not bound by such Payment; but Acquiescence, or any small Matter will be Proofs of the Master's Consent, and that will make the Act of the Servant the Act of his Master: And the Court of *B. R.* resolved, that this was no Payment; for a Goldsmith's Note is only Paper, and receiv'd conditionally, if paid, and not otherwise, without an express Agreement to be taken as Cash. And the Party receiving such Note, should have a reasonable Time to receive the Money, and is not obliged to go strait for the same. Case of *Ward* against Sir *Stephen Evans. Hill. 2 Ann. 2 Salk. 442.*

But giving such a Bill as this upon an original Contract, will be Evidence that it was given and received for Payment: As if one come to buy Goods of another, and having agreed on a Price, the Buyer upon Delivery of the Goods, gives the Seller a Goldsmith's Note in Satisfaction; here it shall be looked upon as Payment of the Money.

A Note given by a Goldsmith shall bind him, tho' the Person fails who was to pay him the Money; for the Note imports an Acknowledgment of so much Money receiv'd on the Party's Account: Decreed in Equity *Mich. 1710. Abr. Cases in Equity, 376.*

A Note was drawn, promising to pay to *W. R.* or Order, the Sum of 100 *l.* on Account of Wine, which was indorsed over to another; and in this Case it was said, 'tis frequent among Merchants to make such Notes; and that they are taken by them as Bills of Exchange; also that Bonds for Money, have been indorsed like Bills of Exchange. *Mod. Cases 29.*

It has been adjudg'd, where a Note is not negotiable from the Beginning, it shall never be made good by Consequence, to be assignable within the Statute 3 & 4 *Ann.* As if the Note be, I promise to pay to *A. B.* so much Money, if my Brother doth not pay it within such a Time, &c. But if a Note be, I promise to account with *T. S.* or his Order, for 50 *l.* for Value received by me, it is good: This shall be construed as a Promise to pay the Money, and being to *T. S.*'s Order, 'tis impossible for him to account with the Indorsee; and therefore it must be to pay.
Pasch,

Pasch. 11 Geo. 1. Mod. Cases in Law and Equity
362, 363.

An Indorsement of a Note or Bill, to pay it to the Order of such a Person, is intended payable to himself; on an Averment that he made no Order to any body to receive the Money. *Carthew* 403.

The stealing or taking by Robbery of any Exchequer Bills, Bank Notes, *South-Sea* or *East-India* Bonds, Dividend Warrants of the Bank, or other Company, Bills of Exchange, Navy Bills or Debentures, Goldsmiths Notes for Money, or other Bonds or Warrants, Bills or Promissory Notes for the Payment of any Money, being the Property of any other Person, or of any Corporation, is declared to be Felony in the same Degree, as it would have been if the Offenders had stolen other Goods of the like Value with the Money due on such Bills, Bonds, Warrants, Notes, &c. And if any Persons shall falsely make, forge, or counterfeit, or cause or procure to be forged or counterfeited, or shall assist in the false making or counterfeiting any Deed or Will, Bond, Writing Obligatory, Bill of Exchange, Promissory Note, or any Indorsement or Assignment thereof, &c. or any Acquittance or Receipt, with Intent to defraud any Person; or shall utter or publish as true, any false or forged Deed, Writing, Bond, Bill, &c. knowing the same to be false, every such Person being lawfully convicted of such Offence, shall be guilty of Felony, and suffer Death as a Felon, without Benefit of Clergy. But no Attainder for any Offence hereby made Felony, shall work any Corruption of Blood, Loss of Dower,

Dower, or Disherision of Heirs. Stat. 2 *Geo.* 2. cap. 25.

And Persons falsly making, altering, forging, or counterfeiting any Acceptance of a Bill of Exchange; or the Number or principal Sum of any accountable Receipt for any Note, Bill, or other Security for Money; or any Warrant or Order for Payment of Money, or Delivery of Goods, with Intention to defraud any Person, &c. are guilty of Felony without Benefit of Clergy, by Statute 7 *Geo.* 2.

Bank Notes, Bankers and the Bank of England.

An Act of Parliament made in the 23d Year of King *Charles* the Second, recites, ‘ That ‘ whereas several Persons, being Goldsmiths, and ‘ others, by taking up or borrowing great Sums ‘ of Money, and lending out the same again ‘ for extraordinary Hire and Profit, have gained ‘ and acquired to themselves the Reputation ‘ and Name of Bankers, &c.’ by which it appears, the Money’d Goldsmiths first got the Character of Bankers in that King’s Reign, and not before : But Bankers of late are those Goldsmiths and private Persons, in whose Hands Money is lodged and deposited for Safety, to be drawn out again as the Owners have Occasion for the same.

The Bank, signifies a Place where a great Sum of Money is let out to Use, returned by Exchange, or otherwise disposed of to Profit ; And there is a *Bank of England* established by Statute, with certain Funds consisting of Custom-Duties, &c. for maintaining thereof, appropriated to the Company, on their lending
ing

ing the Government divers large Sums of Money ; and the Capital Stock, which is encreas'd by divers Statutes, is exempted from Taxes, accounted a Personal Estate assignable over, not subject to Forfeiture ; and the Company make Dividends of the Profits Half-Yearly, &c. Members of the Bank shall not be disabled from being Members of Parliament, or be adjudg'd liable to the Statutes of Bankrupts.

This Company must take Care that the Sum Total of their Debts, do not exceed the Value of the Joint and Capital Stock ; for if by any Dividend, &c. the Stock shall not be sufficient to answer their Debts, in such Case the particular Members, who, in their respective private and personal Capacities, have received any Share of such Dividend, shall be liable, as far as such Share will extend, to pay the Debts which shall be due and owing by the Bank : The Corporation shall not borrow or give Security, under their Common Seal, for more than One Million and two hundred thousand Pounds, unless allow'd by Act of Parliament &c. And the Company are not to trade, or suffer others in Trust for them to Trade with any of the Stock-Money, in buying and selling of Goods or Merchandize, on Pain of forfeiting treble the Value thereof ; but they may deal in Bills of Exchange, and in buying and selling Bullion, Gold or Silver, &c. And the Bank shall exchange all Bills brought to them, and which are issued out of the *Exchequer* for ready Money ; or on Refusal by the Space of twenty-four Hours, the Person demanding it, may have an Action against the Governor, &c. and shall

44 Of Bills of Exchange, &c.

shall recover the Money neglected to be paid, and Damages and Costs. Stat. 5 *W. & M.* 8 & 9 *W. 3.* 7 *Ann. cap. 7.*

And by Statutes, the Funds of this Company are redeemable by Parliament, on paying the Money borrowed: And the Company of the Bank, is to continue a Corporation, and enjoy Annuities 'till redeem'd, &c. During the Continuance of the Bank, no Body Politick, &c. other than the Company, or Partners exceeding six in Number, shall borrow or take up any Money on Bills, or Notes payable on Demand, or at any less Time than six Months from the borrowing thereof. And forging or altering Bank Notes, or tendring such forged Notes in Payment, demanding to have them exchanged for Money, &c. is made Felony. 3 *Geo. 1. cap. 8.* 11 *Geo. 1. cap. 9.*

A Bank Bill payable to *W. R.* or Bearer, was lost, and found by a Stranger, who assign'd or paid it away to another Person, upon a valuable Consideration: By *Holt Ch. Just.* *W. R.* may have Trover against the Finder, for he had no Title to the Bill, tho' a Payment of it to him would indemnify the Bank; but Action lies not against his Assignee for valuable Consideration, which by Course of Trade creates a Property in the Assignee or Bearer. 3 *Salk. Rep. 71.*

A Person brought his Action as Bearer on a Bill, and it was held he must entitle himself to it on valuable Consideration; and among Bankers they never made Indorsements in such Case; but if he come to be Bearer by Casualty or Knavery, he shall not have the Benefit of it. 2 *Show. 235.*

C H A P.

C H A P. II.

Of Letters Patent and Monopolies.

L E T T E R S Patent are Writings of the King, sealed with the Great Seal of *England*, whereby a Person is enable to do or enjoy that which otherwise he could not do; and so called, because they are open with the Seal affixed, and ready to be shewn for Confirmation of the Authority thereby given: And we read of Letters Patent to make Denizens, &c.

A Monopoly is an Allowance of the King by his Grant, Commission, or otherwise, to any Person or Persons, for the sole buying, selling, making, working or using of any Thing, by which other Persons are restrained of any Freedom or Liberty that they had before, or hindered in their lawful Trade. Tho' a Monopoly may be more truly defined to be, a Kind of Commerce in buying, selling, exchanging or bartering, usurped by a few, and sometimes but by one Person, and fore-stalled from all others, to his or their private Gain, and to the Hurt and Detriment of other Men; whereby of Course, or by Authority, the Liberty of Trade is restrain'd, and the Monopolist enabled to set what Price he pleases on Commodities.

These Monopolies used in this Kingdom, have been distinguished in three Parts; first, *Reasonable*, of Things and Trifles for Pleasure, such

such as Cards, Lute-Strings, Tobacco, or the like; Secondly, *Unreasonable*, as of Flesh, Fish, Butter, Cheese, or other needful Things for the Sustenance of Man, without which he can hardly live: Thirdly, *Indifferent*, of Velvets, Silks, Spices, and other Delicacies and Curiosities, **which** are indifferent to be used or not. But all Monopolies are contrary to the ancient and fundamental Laws of this Realm; and being against the Freedom of Trade, &c. Upon this Ground it hath been held, that the King's Grant to any Corporation of the sole Importation of any Merchandize, by our Common Law, is void.

Some Men are satisfied, if a Prohibition of a Commodity be made by Act of Parliament, and they will not call it a Monopoly, tho' it be so in Effect; as when a Society of private Merchants have a Privilege to themselves only, to sell certain Commodities, or to import them, and all other Subjects are excluded, altho' they were neither the Discoverers or first Inventors thereof: But if it be done by the King's Prerogative, then they take it to be a Monopoly. There are others who would have all Things at large in the Course of Traffick, and that there should be no Societies or Corporations of Merchants for any Places of Trade; for by Way of Partnership Merchants might associate themselves, to make or enterprise any Voyages, or in sending any Goods or Merchandize abroad; without having Regard to our Companies for carrying on Trade, some whereof are of great Antiquity. And other Persons make a Difference between Companies or Associations, dealing in a Joint-Stock

Stock or apart; affirming the Management of a Joint-Stock to be within the Compass of a Monopoly; nevertheless they would be contented to tolerate the same for the Employment outward, but for Returns homeward they would have a particular Division of the Commodities which they receive.

The learned Judge *Vaughan* says, that if the Exportation or Importation of a Commodity, or the Exercise of a Trade be prohibited generally by Parliament, and no Cause expressed of the Prohibition, a Licence may be granted by the King to one or more Persons without Limitation to export or import, or to exercise the Trade: For by such general Restraint, the End of the Law is no more than to limit the over-numerous Exporters, Importers, or Traders in that Kind, by putting them to the Difficulty of procuring Licences; and therefore such general Licences shall not be accounted Monopolies. In these Cases, the Law implies that the King may license, as well as if the prohibitory Law had been, that no such Exportation, &c. should be without the King's express Licence. *Vaugh. Rep.* 345.

Here I have given the various Opinions of different Men, concerning what is a Monopoly, or not so; and now I shall take particular Notice of the great Case of Monopolies in the Reign of Queen *Elizabeth*, as transmitted down to us by that excellent Lawyer Sir *Edward Coke*. Queen *Elizabeth* intending that her Subjects being able Men fit for Husbandry, should be exercised therein, and not employ themselves in making Playing Cards, which

which had not been any ancient manual Occupation within this Realm; and considering that by making a Multitude of Cards, Card-playing was become more frequent, and especially among Servants and Apprentices, and poor Artificers; and to the End her Subjects might apply themselves to more lawful and necessary Trades; by her Letters Patents under the Great Seal, dated the 13th of *June*, in the Thirtieth Year of her Reign, granted to *R. B. Esq;* full Power, Licence and Authority by himself, his Servants, Factors and Deputies to provide and buy in any Parts beyond the Sea, all such Playing Cards as he thought good, and to import them into this Kingdom, and to sell them within the same; and that he, his Servants, Factors and Deputies, should have and enjoy the whole Trade, Traffick and Merchandize of all Playing Cards, to have and to hold for Twelve Years: And by the same Letters Patent, the Queen charged and commanded, that no Person or Persons besides the said *R. B. Esq.* should import or bring any Cards into this Realm, during the said Time, nor make, buy or sell, any such Playing Cards, &c. upon Pain of the Queen's highest Displeasure, and of such Fine and Punishment as Offenders deserve in Case of voluntary Contempt.

On an Action of the Case brought by the Patentee against one for importing and making Cards, contrary to these Letters Patent, notwithstanding the glorious Preamble and Pretence thereof, it was resolved that this Grant was void: For it is a Monopoly, and against the Common Law, and likewise divers
Acts

Acts of Parliament; for all Trades as well Mechanical as others, which prevent Idleness (the Bane of the Common-wealth) and exercise Men and Youth, for the Maintenance of themselves and their Families, and for Increase of their Substance, to serve the Queen when Occasion shall require, are profitable to the Realm. And the sole Trade of any Mechanick Art, or any other Monopoly, is not only a Damage and Prejudice to those who exercise the same Trade, but also to all other Subjects, for the End of these Monopolies is for the private Gain of the Patentees: And there are three inseparable Incidents to every Monopoly, against the Common-wealth, *i. e.* the Price of the same Commodity will be raised; after the Monopoly granted, the Commodity is not so good and Merchantable as it was before; and it tends to the Impoverishment of divers Artificers and others, who before, by the Labour of their Hands in their Art or Trade had supported themselves, but now will be idle and in Beggary.

And it is evident by the Act of 3 *Edw. 4. cap. 4.* That the Importation of foreign Cards was prohibited at the grievous Complaint of the poor Artificers Card-makers, who were not able to live at their Trades, if such Cards should be imported; and the said Act provides Remedy for maintaining of the Trade of making Cards, forasmuch as it maintain'd many Families by their Labour and Industry; and the like Provision is made in 1 *Rich. 3. cap. 12.* and Persons may not be restrained from exercising any Trade, but by Parliament. Now when the Wisdom of the Parliament has

made a Statute to restrain for the Good of the Publick, the Importation of foreign Manufactures, to the Intent that the Subjects of the Realm might be employ'd in making of the said Manufactures, &c. and thereby maintain themselves and their Families; to grant the sole Importation of them to one for private Gain, or to divers without Limitation, notwithstanding the said Statute, is a Monopoly against the Common Law: And therefore, the Dispensation or License to have the sole Importation and Merchandizing of Cards (without any Limitation or Stint) notwithstanding the Act 3 E. 4. is utterly against Law. Adjudg'd *Trin.* 44 *Eliz.* 11. *Co. Rep.* 84, 85.

King *Edward III.* by his Letters Patents, granted to one *John Peche* the sole Importation of sweet Wines into *London*, and at a Parliament held 50 *Ed.* 3. this Grant was declared void. And Queen *Elizabeth* having granted unto certain Patentees, the sole Coinage and Transportation of all the Tin in *Cornwall* and *Devonshire*, for 21 Years, under a large yearly Rent to be paid at the *Exchequer*. Adjudg'd, that this Patent was a Monopoly, *Anno* 13 *Jac.* 1.

In an Action, the Plaintiff set forth, that in the Reign of *Hen.* 4. there was a Society of Merchant-Adventurers in *England*, and Queen *Elizabeth* did incorporate them by that Name, with Privilege to Trade to *Holland*, *Brabant*, *Flanders*, &c. prohibiting all others not free of that Company from trading thither; and that the Defendant not being free of that Company, did Trade there without their

their Leave, and imported Goods to their Damage, &c. To which the Defendant pleaded the Statute 15 *Ed. 3.* *That the Seas shall be open to all Merchants to pass with their Merchandise whither they please:* The Question was here, whether the King had Power to restrain his Subjects from Trading to particular Places? This Case was not determined; but the better Opinion was, that such a Grant was void, it agreeing with my Lord *Coke's* Definition of a Monopoly: It is against the Statute of *E. 3.* which gives Liberty to Merchants to buy and sell without Disturbance; and 'tis expressly against the Statute 21 *Jac. 1.* The Case of the *East-India* Company is not like this, because that Patent restrained the Subject from trading with Infidels, without Leave; if it had been to restrain them from trading with Christians, it had been void. 3 *Mod. Rep.* 126.

By the Stat. 21 *Jac. 1. cap. 3* it is enacted and ordained, That all Monopolies, Commissions, Grants, Letters Patents and Licences, for the sole buying, selling and making of Goods and Manufactures within the King's Dominions; and all Warrants, Proclamations and Restraints, &c. for the erecting, strengthening or countenancing thereof, against the Tenor of any Law or Statute, shall be void: And Persons grieved by the putting them in Use, shall recover in the Courts at *Westminster* treble Damages and double Costs, by Action on the Statute; and if any Person shall cause such Action to be stayed or delayed before Judgment, by any Order, Warrant, &c. except only of the Court where it is depending; or shall after Judgment had, cause or procure

procure the Execution to be stayed by Colour or Means of any such Order or Warrant, Power, or Authority, save only by a Writ of Error or Attaint, he or they so offending, shall incur a *Premunire*.

But this Act doth not extend to any Grants allowed or confirmed by Act of Parliament; nor to any Grant or Charter to any Corporation, Company or Fellowship of any Art, Trade or Myſtery, nor to any Company or Society of Merchants for Enlargement of Trade; nor to Grants of new Manufactures, made to the Inventors thereof by Patent for fourteen Years, being not contrary to Law, or prejudicial to the Commonwealth; nor to any Grant of Privilege for Printing, or making or compounding of Salt-petre for Gunpowder; or for caſting or making Ordnance, &c. And certain Patents granted to divers Persons, are excepted out of the Statute.

And Letters Patent and Grants of Privilege heretofore made for 21 Years, or under, to the Inventors of any new Manufactures, where they are not contrary to Law or miſchievous, by raiſing the Prices of Commodities at home, or hurt of Trade, or generally inconvenient, are ſaved; ſo alſo ſuch Patents granted heretofore for more than 21 Years from the Date thereof, notwithstanding this Act.

All Matters relating to Monopolies, Grants, Licences, &c. ſhall be examined, heard and determined by and according to the Common Laws of this Realm, and not otherwiſe; and the making Uſe of or procuring any unlawful Monopoly, is puniſhable by Fine and Imprisonment at Common Law. 3 Co. *Inſt.* 181.

It is held, that a new Invention to do as much Work in a Day, by an Engine as formerly used to employ many Hands, is contrary to the Statute; by Reason it is inconvenient, in turning so many Men to Idleness. And concerning Inventors of new Manufactures, &c. it hath been determin'd on this Statute, that the Manufacture in such Case must be substantially new, and not barely an Improvement of any old one, by any Addition, &c. thereto, to be within the Statute: It must be such, as no other Persons used at the Time of granting the Letters Patent; and no old Manufacture in Use before, can be prohibited in any Grant for any new Invention. *3 Inst.* 184.

A Grant of a Monopoly may be to the first Inventor, by the *21 Jac. 1.* and if the Invention be new in *England*, a Patent may be granted, tho' the Thing was practised beyond Sea before; for the Statute mentions new Inventions within the Realm: So that if they be new here, it is within the Act, which intended to encourage new Devices useful to the Kingdom; and it is the same Thing, whether acquired by Experience or Travel abroad, and so brought hither, or by Study at home. *2 Salk.* 447.

A Person had a Grant by Letters Patent from King *Charles II.* for the sole printing of Blank Writs, and Bonds, &c. for the Term of 30 Years, and one *Darrel* a Stationer having printed five hundred Blank-Bonds, Action of the Case was thereupon brought against him; who pleaded, that the Company of Stationers for the Space of 40 Years then last past, be-

fore the granting of these Letters Patents, had constantly printed Blank Bonds, and so made a general Conclusion. It was here argued, that the King hath a Prerogative in Printing, and may grant it exclusive to others; and that such Grants hath been made by the Kings of *England* ever since Printing was invented, of which several Instances were given: Now the Statute against Monopolies doth not reach to this Case, because of the Proviso therein to exempt all Grants of sole Printing; and there being an inherent Prerogative in the King, in these Cases, whenever he exerts it, all other Persons are bound up who were at Liberty before.

To this it was answered, and confess'd, that the King hath a Prerogative to grant the sole Printing to a particular Person; but then it must be in such Cases where no other Persons whatsoever can claim a Property in it: On considering Printing as an Art exclusive from the Thing printed, this Patent is not good; for if a Man invents a new Art, and another learns it before the Inventor can obtain a Patent, if afterwards granted 'tis void: And then if this be consider'd in Relation to the Blank Bonds printed, it is not a new Invention, which might have made the Grant good, because the Stationers Company have printed such so long a Time; and for that Reason this Patent is void, for where the Invention is not new, there Trade shall not be restrained. And sole Printing is a Manufacture; 'tis an Art and Skill which the King cannot restrain; but when it is of publick Concern, then the Prerogative may interpose.

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The Court of King's Bench made a Difference in this Case between Things of a publick Use, and those which are publick in their Nature; and the Court inclin'd, that the Patent was not good. 3 *Mod.* 75, 76, 78. 2 *Nelf. Abr.* 899.

It is agreeable to our Common Law, and the fundamental Laws of all Nations, to grant Projectors or Inventors of useful Things Privileges for twenty-one, fourteen, eleven or seven Years; and as to the Time granted, the Thing itself ought to make the Difference, upon good Consideration, and so as not to measure all Things alike. But the general Intention of all Grants by Letters Patent for Manufactures, hath or ought to have Relation to set the People on Work, to recompence the Inventor of the Art or Science, and that Things may in some Respect be better cheap to the Subjects.

There may be Letters Patents granted to reward a Projector, and the same be not any Monopoly, altho' the publick Liberty may seem thereby to be restrained; and it may be rather a common Distribution than Restraint, whenever it brings a general Good to the Nation. The Statutes of the Kingdom, restraining from exercising divers Crafts all such as have not served an Apprenticeship unto the Art which they would exercise, do it to no other End, but that those Arts might be brought to better Perfection, and the Things be good and serviceable for those that buy and use of them.

C H A P. III.

Of Trading Companies, by Statute, the Merchant-Adventurers, Turkey and Muscovy Company, &c.

A Company of Trade, is a Society of Merchants, erected and incorporated by the King's Letters Patents, and having also divers Privileges by Acts of Parliament, exclusive from other Subjects, for the Maintenance, enlarging, and better carrying on, of our most considerable Trades to foreign Parts.

There have been several of these Companies in *England*, as well in ancient, as late Times; the first of which was *the Company of Merchant-Adventurers*, whose Patent was granted by King *Edw. 1.* near five hundred Years since, when the said Merchants obtained Privileges from *John Duke of Brabant*, and were then called the Brotherhood of *St. Thomas a Becket of Canterbury*, which Privileges were confirmed by King *Edw. 3. Hen. 4.* and their Successors, down to King *Hen. 7.* who gave them the Name of Merchant-Adventurers: After him they were confirmed by King *Hen. 8. Edw. 6. Queen Elizabeth,* and King *James 1.* not without many Enemies, who charged them to be Monopolies, and unprofitable to the Kingdom; whereupon their Patent was for a Time suspended, but afterwards confirmed again by the King's Proclamation.

the Merchant-Adventurers, &c. 57

As this Company or Society, for the Management and Improvement of Commerce, by exporting our native Commodities to other Countries, is of *ancient* Estimation; so has their Government been very commendable, preserving the Amity and Intercourse between the Realm, and other neighbouring Princes and States, and vending the best Commodities of the Kingdom; yet so, that every Man might at his Pleasure, freely sell, without any Combination, to the great Honour and Service of the State: Their Trade I have before observ'd, is to *Holland* and *Flanders*, &c.

The next Company that was erected, was the *Barbary* Merchants, incorporated in *Henry* the 7th's Time, which was the Age that the *English*, in Imitation of the *Portuguese* and *Spaniards*, began to make Discoveries: But that Company decaying, out of their Ruins arose the *Levant* or *Turkey* Company; which first Trading with *Venice*, and then with *Turkey*, furnished *England* with the *East-India* Commodities that Way; and which till then was brought to us by Land, and to the *Portuguese* alone by Sea: This Company hath considerable Factories at *Constantinople*, *Smyrna*, *Aleppo*, &c. and they export Cloth, Kerseys, Iron, Tin, Lead, Wire, Steel, Pewter, Furs, Hides, Sugar, Elephants Teeth, Brazil, and several *Indian* Commodities, as Spices, Logwood, Indigo, Cochineal, white and red Lead, &c. And they import Raw Silks of *Persia*, *Tripoly*, &c. Camblets, Grograms, Mohairs, Woolls, Cotton-Yarn of *Smyrna* and *Cyprus*, Gauls of *Mosolo* and *Toccat*, Currans, Oils, Drugs, *Turkey* Carpets, Cordivants, Boxwood, Rhubarb, Wormseed,

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Wormseed, Senna, *Turkey* Leather, Cummin Seeds, and other rich Commodities.

From the flourishing State of the *Levant* or *Turkey* Company, in the Reign of Queen *Elizabeth* did arise the Old *East-India* Company, (so distinguish'd from the New one establish'd in the Reign of King *William* the third) who having fitted out Ships of Force, brought from thence at the best Hand, the *Indian* Commodities, which formerly had been sold to *England* by different *Europeans*; and they having obtain'd divers Charters and Grants from the Crown in their Favour, were sole Masters of that advantageous Traffick; 'till at last a new Company was incorporated by King *Will.* 3. and both these Companies, after the Expiration of a certain Term, were by Articles united, as will particularly appear under its proper Head.

By the Statute 2 *Will. & Mary*, cap. 9. reciting, That the Importation of some Sorts of Thrown Silk into this Realm is greatly prejudicial to the Exportation of the Woollen Manufactures thereof, and tends very much to the impoverishing great Numbers of Artificers, whose Livelihood and Subsistence depends upon the Throwing of Raw Silk, &c. for the Prevention of which Mischiefs, and encouraging our Manufactures, and of that useful and National Trade into *Turkey*, and the better to support the Art of Throwing Silk, and the Poor therein employed,

It is declared, That the Throwing of Silk is not, nor ought to be construed a Manufacture within the Intention of the Act, 12 *Car.* 2. for the encouraging and encreasing of Shipping

Shipping and Navigation; and that no Thrown Silk of the Growth or Production of *Turkey*, *Persia*, *East-India*, or any other Country or Place (except such as is or shall be of the Growth of *Italy*, *Sicily*, or of the Kingdom of *Naples*, and which shall be imported in such Ships or Vessels, and navigated in such Manner as in the said Act of Navigation is directed or allowed, and brought from some of the Ports of those Countries or Places whereof the same is of the Growth or Production, and which shall come directly by Sea and not otherwise) shall be brought or imported into *England* or *Wales*, *Jersey* or *Guernsey*, &c. under the Penalty and Forfeiture of all such Thrown Silk, so imported contrary to the true Intent and Meaning of this Act; one Moiety whereof shall be to the Use or the King, and the other Moiety to such Persons as shall seize, inform or sue for the same, in any Court of Record.

And 6 *Geo. 1. cap. 13.* is to the following Effect; That in the aforesaid Act of *Car. 2.* there is a Proviso, that nothing therein contained shall extend or be meant to restrain the Importation of any of the Commodities of the *Streights* or *Levant* Seas, loaden in *English*-built Shipping, and whereof the Master and three Fourths of the Mariners at least are *English*, from the usual Ports or Places for lading them heretofore, within the *Streights* or *Levant* Sea, though the said Commodities be not of the very Growth of the said Places: And whereas at the same Time of passing the said Statute, the Subjects of *France* exported very little Woollen Manufacture into *Turkey*,
and

and were then supplied with great Quantities of Woollen Goods from *England* for their own Use, and likewise with Raw Silks and other Goods of *Turkey*, which were the Returns of *English* Woollen Manufactures; and the Manufactures in *France* having since that Time been greatly increased, and very large Quantities of such Goods being now annually imported from thence to *Turkey*, in Return whereof they bring Raw Silk and other Commodities to *Marseilles*, and other Parts of *France*, great Quantities of which are carried into *Italy*, and thence imported into *Great Britain* in *English* Shipping, greatly to the Discouragement of the Woollen Manufactures of this Kingdom, and the Advancement of the *French* Manufactures.

Therefore that the *British* Trade to *Turkey* may not be lessened, and to prevent its being lost, it is enacted, That the said Clause or Proviso above mentioned, as to the Importation of Raw Silk and Mohair Yarn, of the Product or Manufacture of *Asia*, shall be repealed; excepting only as to the Ports and Places in the said *Streights* or *Levant* Seas, which are within the Dominions of the *Grand Signor*.

The *Muscovy Company* of Merchants, was incorporated by King *Edw. 6.* and encouraged with additional Privileges by Queen *Mary* and Queen *Elizabeth*, &c. The Commodities they export, are all Sorts of Woollen Cloth, dy'd and dress'd, Kerseys, Cottons, Bays, Perpetuana's, Fustians, *Norwich* Stuffs, Lead, Tin, Pewter, Allom, Copper, Thread and Lace; ordinary Sorts of Wine and Fruits, with other
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and Merchant-Adventurers, &c. 61

Commodities of the Manufacture of *England*: The Imports are, Tar, Cordage, Cable-Yarn, Tallow, Wax, red Hides, Buff-Hides, Cow-Hides in the Hair, Goat-Skins undress'd, Cordivants, tann'd Hides, Hogs-Bristles, Raw Silks, Linseed, Ising-glass, Beaver, several Kinds of rich Furs, Seal-Skins, Flax, Hemp, Linnen, Cavere, Rhubarb, Castorum, Train-Oil, Salmon, Stock-Fish, Cod-Fish, &c.

And the Statute 10 & 11 *W. 3. cap. 6.* Enacts, That every Subject of this Realm, desiring Admission into the Fellowship of *English* Merchants, commonly called the *Russia* or *Muscovy* Company, on Request made to the Governor and Assistants of the said Company, or three or more of them, shall be admitted into the said Fellowship, and enjoy all Privileges, &c. granted thereunto, either by the Letters Patents, *Anno 1 & 2 P. & M.* or by the Act of Parliament of 8 *Eliz.* confirming the same; paying for such Admission, for the Use of the said Company, only the Sum of five Pounds.

Any Person residing in any Out Port, or other Place within this Realm, making Request to be admitted into the said Company, by his Agent or Deputy, and tendering five Pounds for such his Admission, the said Governor, &c. shall, under the Common Seal of the said Fellowship, within ten Days after such Request, appoint one or more Persons to admit him into the Freedom of the said Company, and to give him the Oath of a Freeman thereof. And by this Act, Naval Stores imported here from *Russia*, are to be accounted for to the Parliament.

An

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An *Eastland Company* of Merchants, trading to *Norway*, *Sweden*, *Poland*, and other *Eastland Countries*, was incorporated in the 21st Year of the Reign of Queen *Elizabeth*: This Company exports Cloth, Kerseys, Serges, Stuffs, Cotton, Stockings, Hats, Gloves, Pewter, Lead and Tin, and some *Indian Spices*, &c. as also *Southern Commodities*, such as Satins, Silks, &c. And also imports Mafts, Deals, Timber, Oars, Clapboards, Baulks, Bumspars, Caulspars, Pipe-staves, Wainscot and Quarters, Linnen Cloth, Hemp and Flax, Fustians, Cable-Yarn, Cordage, Pitch, Tar, Pot-ashes, Tallow, Hides, Furs, Buck-skins, Lattin, Copper, Steel-wire, Quicksilver, Sturgeon and other Fish.

And by Statute 25 *Car. 2. cap. 7.* for Encouragement of the *Eastland Trade*, it is enacted, that it shall and may be lawful, for every Person and Persons, Natives or Foreigners, at all Times, to have free Liberty to trade into and from *Sweden*, *Denmark* and *Norway*; any Thing in the Charter of the Governor, Assistants, and Fellowships of Merchants of *Eastland*, or any other Charter, Grant or Act heretofore made or done, or hereafter to be done to the contrary notwithstanding: And farther, that whatsoever Person or Persons, Subjects of this Kingdom, shall desire to be admitted into the said Company of Merchants of *Eastland*, every such Person shall be admitted into the same, on paying for his Admission, the Sum of forty Shillings, and no more.

See *Letters Patent and Monopolies.*

C H A P,

C H A P. IV.

*Of the Company of the Royal Fishery of
England, and Greenland Company.*

THE inestimable Riches and Commodities of the *British* Seas have been the great Subject of divers Authors, who justly observe, that the Coasts of *Great Britain* do yield such a continual Harvest of Gain and Benefit to all those, who with Diligence labour in the same, that no Time or Season passeth away without some Means of profitable Employment especially to such as apply themselves to *Fishing*; which from the Beginning of the Year to the End continues upon some Part or other of our Coasts, and therein such infinite Shoals of Fishes are offered to the Takers, as may justly move Admiration, not only to Strangers, but to those that are daily employ'd about them.

In the Month of *September*, not many Years since, upon the Coast of *Devonshire*, Five Hundred Ton of Fish were taken in a Day: And about the same Time Three Thousand Pounds worth of Fish in one Day were taken at *St. Ives* in *Cornwall* by small Boats and other such like Means. And our Fleet of Colliers once returning from *Newcastle* laden with Coals, near *Flamborough Head* and *Scarborough*, met with such a Multitude of Cod, Ling and Herrings, that one amongst the rest, with certain Ship-Hooks and other Instruments, drew up as many Fish in a small Time, as
were

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were sold for near as much as her whole Lading of Coal: And 'tis said some Hundreds of Ships might have been there laden with Cod and Ling in two Days and two Nights.

Out of which wonderful Affluence and Abundance of Fish swarming in our Seas, we may perceive the great Gain which Foreign Nations make, and especially the *Dutch* by Fishing on our Coasts; who by this Means principally have increased in their Shipping, Mariners and Trade, in Towns and Fortifications, Power, Revenue, Wealth, and all Manner of Provisions, and Store of Things necessary: Of which you may read at large in Sir *John Borroughs's* Treatise of the Sovereignty of the *British* Seas. In the Reign of King *Edw. 3.* there was a Disputation with *France* concerning the Fishing of the Seas about *Britain*, in which it was proved to belong to *England*.

King *James* the First, before his coming into *England*, granted the Fishing of *Scotland* to the *Hollanders* for Fifteen Years, it being agreed by more antient Treaties between them, that such Fishing should be Eighty Miles from the Coast, to the End the Shoals of Herrings should not be interrupted. The same King in the Fourth Year of his Reign of *Great Britain*, made a Grant to one *Collins* for Twenty-one Years, for the Fishing in some Parts of *Ireland*: And the like Grants have been made for the Isles of *Guernsey* and *Jersey*, according to the Common Law of *England*; also the Subjects of *Spain* have in former Times been licensed to Fish in our Seas, &c. And in the Seventh Year of his said

said Majesty's Reign, he caused the following Proclamation to be made concerning his general Right and Dominion of Fishing, *viz.*

A Proclamation concerning the King's Dominion of Fishing.

JAMES, by the Grace of God, King of Great Britain, France and Ireland, Defender of Faith, &c. To all and singular Persons to whom it may appertain, greeting. Altho' we do sufficiently know, by our Experience in the Office of Regal Dignity, (in which, by the Favour of Almighty God, we have been placed and exercised these many Years) as also by Observation which we have made of other Christian Princes exemplary Actions, how far the Absoluteness of our Sovereign Power extendeth itself; and that in regard thereof, we need not to yield Account to any Person under God, for any Action of ours which is lawfully grounded upon that just Prerogative: Yet such hath ever been, and shall be our Care and Desire to give Satisfaction to our Neighbour Princes and Friends, in any Action which may have the least Relation to their Subjects and Estates: That we have thought good (by Way of friendly Præmonition) to declare unto them all, and to whomsoever it may concern, as followeth. Whereas we have been contented, since our coming to the Crown, to tolerate an indifferent and promiscuous Kind of Liberty to all our Friends whatsoever to Fish upon our Streams, and on any of our Coasts of Great Britain, Ireland, and other adjacent Islands, so far

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forth as the Permission or Use thereof might not redound to the Impeachment of our Prerogative Royal, nor to the Hurt and Damage of our loving Subjects, whose Preservation and flourishing Estate we hold ourselves principally bound to advance before all worldly Respects: So finding that our Connivance therein, hath not only given Occasion of over great Incroachments upon our Regalities, or rather questioning of our Right; but hath been a Means of much daily Wrong to our own People that exercise the Trade of Fishing, by Reason whereof as a Multitude of Strangers pre-occupy those Places, from whose Hands they most commonly receive Injuries, our Subjects are constrained to abandon their Fishing, or at least become so discouraged in the same, as they hold it better for them to betake themselves to some other Course of Living; whereby divers of our Coast Towns are much decayed, and the Number of Mariners daily diminished, which is a Matter of great Consequence to our Estate, considering how much the Strength thereof consisteth in the Power of Shipping, and the Use of Navigation: We have thought it now both just and necessary, (in Respect that we are by God's Favour lineally and lawfully possessed, as well of the Island of *Great Britain*, as of *Ireland*, as the rest of the Islands adjacent) to bethink ourselves of good and lawful Means to prevent those Inconveniences, and many others depending upon the same. In the Consideration whereof, as we are desirous that the World may take Notice, that we have no Intention to deny our Neigh-
bours

bours and Allies, those Fruits and Benefits of Peace and Friendship which may be justly expected at our Hands in Honour and Reason, or are afforded by other Princes mutually in the Point of Commerce, and Exchange of those Things which may not prove prejudicial unto them; so because some such convenient Order may be taken in this Matter, as may sufficiently provide for all these important Considerations which do depend thereon: We have resolved, first to give Notice to all the World, that our express Pleasure is, that from the Beginning of the Month of *August* next coming, no Person of what Nation or Quality soever, not being our natural born Subject, shall be permitted to fish upon any of our Coasts and Seas of *Great Britain, Ireland*, and the rest of the adjacent Isles (where most usually heretofore any Fishing hath been) until they have orderly demanded and obtained Licences from us, or such of our Commissioners as we have authorized in that Behalf, at *London* for our Realms of *England* and *Ireland*, and at *Edinburgh* for our Realm of *Scotland*; which Licences our Intention is, shall be yearly demanded, for so many Vessels and Ships, and the Tonnage thereof, as shall intend to fish for that whole Year, or any Part thereof, upon any of our Coasts and Seas as aforesaid, upon Pain of such Castisement, as shall be thought fit to be inflicted on such wilful Offenders. *Given* at our Palace at *Westminster*, the sixth Day of *May*, in the Seventh Year of our Reign of *Great Britain, France* and *Ireland*, *Anno Dom.* 1609.

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I have thought it proper, to insert this Proclamation of King *James I.* asserting his Majesty's Right and Dominion of the Seas, expressed in the Words *lineal* and *lawful* Possession of an hereditary Kingdom, whereunto those Seas are joined and appertaining; and requiring that Licences be taken out by Foreigners for Fishing therein, before I proceeded to Charters and Acts of Parliament to our own Companies for that Purpose, which I now come to; And,

First the Company of the Royal Fishery of England.

King *Charles* the second, by Commission under the Great Seal of *England*, constituted his Royal Highness *James* Duke of *York*, *Edward* Earl of *Clarendon*, *Thomas* Earl of *Danby*, and several other Persons of Honour, to be a Council for the Royal Fishery of *Great Britain* and *Ireland*, authorized with divers Powers, &c. and declared himself Protector of it: And in the 29th Year of his Reign, he incorporated them and others who were Traders and Adventurers into a Company, calling them *The Company of the Royal Fishery of England*. And the Grants, Privileges and Immunities of this Company, were as follow:

They had Power to purchase Lands, Tenements and Hereditaments, and dispose thereof, to the Value of 1000*l.* per Annum: To have and use a common Seal, in and for all Causes and Busineses of the said Company. And to meet together, elect and appoint a Governor, Sub-Governor, or Deputy-Governor,

nor, and twelve Committees yearly, for a Court of Assistants; who, or any three or more of them, (whereof the Governor, &c. to be one) are authorized to act in all Things according to such Rules, Orders, and Directions, as should from Time to Time be made and given unto them by the General Court: And for Want of such Orders, Rules and Directions, to manage, govern, direct, and do what they should judge necessary and expedient for the well ordering and Government of the said Company, and the Improvement of their Joint-Stock and Trade, to all Intents and Purposes, as if the same were done at and by a General Court of the said Company.

And the said Court of Assistants, or any seven or more of them, as aforesaid, as often as they shall find Occasion, may summon a General Court; but no Assembly, or Meeting of the said Company shall be deem'd a General Court, unless the Governor, Sub-Governor, or Deputy-Governor, six of the said Committees, and five other Members of the Company, at least, be present. And the said General Court may admit other Persons to be Members; and may increase, contract, or divide their Joint-Stock, as they shall think fit: And the Members thereof may grant, transfer, and assign their respective Stocks, as is therein mentioned: Also such General Court may ordain and establish any Laws, Ordinances, Orders, and Constitutions as to them shall seem convenient, for the Government of the Company; and may impose Mulcts and Amerciaments upon the Breakers of such Laws, or remit, pardon, or release

the same on the Party's Submission; and upon the Conviction of Offenders for any Misdemeanor, may remove them, and chuse others.

The Company may fish in and upon all the Coasts, Creeks, Inlets, Rivers, Lakes and Arms of the Sea belonging to the Kingdoms of *England*, *Scotland* and *Ireland*, or any of them; or any other of his Majesty's Dominions, whereof the Fishings are not already granted, appropriated, or belonging to some particular or private Person or Persons, Bodies Politick or Corporate: And likewise in and upon the main Sea, or any Part thereof: And have free and full Liberty to carry and transport their Fish, and Oil made of Fish, to all Ports, Places and Markets, both in *England* and beyond the Seas; and to sell the same for ready Money, or Commodities. And they may erect Store-houses, Warehouses, Work-houses; and build and make Wharfs and Docks, in and upon any of his Majesty's Wastes, Commons, or waste Grounds adjoining unto or upon any publick Rivers or Seas, within any his Dominions, without paying or rendering any Rent or Duty for the same.

And neither their Masters, Skippers, Steerfmen, Ship's Crews, Mariners, Fishermen, nor others employed by the Company in their Fishing, whether Foreigners or Natives, shall be impanell'd, sworn, or compelled to serve on any Juries or Inquests at *Westminster*, the Assises, Sessions, or elsewhere. They were likewise granted the yearly Sum of 20*l.* for each and every Dogger which they had, or within seven Years should build in *England*,

or any of his Majesty's Dominions; the same to be paid Quarterly out of the Customs within the Port of *London*, without farther Warrant or Direction. And they were to have all Privileges in the City of *London*, as fully and freely as any Company of Merchants, established by Letters Patents, or Charters.

And all Admirals, Vice-Admirals, General Commanders, Captains, Mayors, Sheriffs, Justices of the Peace, Custom-house Officers, and other Officers, Ministers, People and Subjects of his Majesty whatsoever, were enjoined to be in all Things aiding and assisting to the said Company and their Successors, their Factors, Agents, and Servants, in the Execution and Enjoyment of the Premises, as well at Land as by Sea, whensoever thereunto desir'd, &c.

These were the Privileges granted to the said Company; but their Stock first agreed upon, being too little to carry on an advantageous Trade, the Company afterwards, at a General Meeting, declared it was necessary for carrying on the said Trade, that a Stock of Thirty Thousand Pounds should be raised; and that all and every of the then Members of the said Company should subscribe, and bind himself in a Bond of 1000*l.* to the Secretary of the Company, to advance and pay 500*l.* to their Treasurer, for their Adventures in the Stock of the said Company.

And for the Encouragement of Persons to become Adventurers, in the room of such as should not subscribe, &c. It was ordered, that any five of the Court of Assistants, &c. should receive Proposals that might be of Advantage

to the Company; as also to treat, contract, and agree with the Proposers thereof, for their being admitted into, and incorporated with the said Company: And that the Company, should be reduc'd to the Number of forty-five Persons, or fewer; but not under twenty-eight Persons.

After this the Stock was augmented to 300,000*l.* One hundred thousand Pounds whereof to be subscribed by the surviving Patentees, and other the then present Members of the Company; and Two hundred thousand Pounds more by other Persons. And it was declared, that one tenth Part of each Sum subscrib'd, should be appropriated to and for the Use of the Trustees, and of such Persons as they should find useful for and in promoting the Interest and Service of the said Company; so as the same, nevertheless, should be and remain in the Stock for carrying on the Trade thereof: And the remaining nine Parts, to and for the sole Use and Benefit of the respective Subscribers, their Executors, Administrators and Assigns.

By the Stat. 9 *Ann.* the Crown may, by Letters Patent, direct a Stock, to consist of 20*s.* upon every hundred Pounds of the Capital Stock of the *South-Sea* Company, and to be raised by the Members thereof in Proportion to their Adventures, to be employ'd in the improving, enlarging, and carrying on the *Fishery of England*, for the Use of the Members of this Company: But no Money shall be call'd from the Members of the Corporation, for carrying on such Fishery, but by a General Court of the Company, after
fourteen

fourteen Days publick Notice given in the Gazette.

The Greenland Company of Merchants by Statute.

The Statute 4 & 5 W. & M. cap. 17. ordain'd, That a Joint Stock of 40,000*l.* at least shall be raised by Subscriptions by Sir *William Scawen*, Knt. and divers other Persons, to be paid to the Use of the Company established by this Act; and the said Sir *W. S.* and the rest of the Persons named, and all and every other Person and Persons, Subjects born, or naturalized or made Denizens, who shall have any Share in the said Joint-Stock, shall be incorporated by the Name of *The Company of Merchants of London trading to Greenland*, and have a Common Seal, and Ability to purchase Lands and Tenements in Succession, so as the same exceed not the yearly Value of 100*l.* and may do and execute all Matters and Things which any other Body Corporate may lawfully do or execute.

The said Company during the Continuance of the Joint-Stock, shall freely use the Trade and Merchandize of catching Whales in, to and from *Greenland*, and the *Greenland Seas*, and in all Seas and Places whatsoever, except in the Seas belonging to his Majesty's Colonies and Plantations in *America*, without Interruption or Disturbance. And a Governor, Deputy-Governor, and sixteen Committees, shall be elected as followeth, to have the Management and Direction of the said Trade; and any thirteen of the Persons named in the
Act

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Act may call a Court of all the Subscribers, and others, that shall have any Share in the said Joint-Stock, who shall meet and choose one fit Person, having subscribed 1000 *l.* or upwards, to be the Governor, and another Person so qualified to be Deputy-Governor; and sixteen others, having subscribed each 500 *l.* or upwards, to be the Committees; all of whom shall take an Oath, to maintain the said Company, and for the faithful Execution of their Trusts, &c.

No Persons who shall subscribe, or have less in the Stock than 500 *l.* shall have any Voice at the General Court of the Company; every Person so subscribing shall have one Vote, and such as subscribe or have 1000 *l.* in the Stock, shall have two Votes, and no more, though they subscribe more than that Sum. And all Persons subscribing, or paying in any Money, shall be admitted into the Freedom of the Company *gratis*, and shall take this Oath before the Governor or Deputy-Governor, or any five of the Committees, *viz.*

You shall swear, That you will assist, and with all your Power support and maintain the Company of Merchants of London trading to Greenland: The By-Laws and Ordinances which shall be made by Authority of this Company, that are not repugnant to the Laws of this Kingdom, you shall, according to your Knowledge thereof, uprightly and duly keep and obey.

So help you God.

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The Governor, or Deputy-Governor, or any five of the Committees for the Time being, shall between the first Day and the twentieth of *October* yearly, call a General Court of all the Members of the said Company, who shall have subscribed 500 *l.* and paid in according to the Direction of the Statute, and shall have taken the Oath of Admission, to elect a Governor, &c. and Committees for the Year ensuing; and if any of them happen to die within the Year, the Governor, or Deputy-Governor, or five of the Committees, may call a General Court to choose another in his Place during the Remainder of the Year.

At all General Courts, so summoned by the Governor, &c. and five of the said Committees, the Governor, or in his Absence the Deputy-Governor, shall be present, and in Case of Equality of Votes, shall have a casting Vote: And all Members having the Sum of 500 *l.* in the said Stock, or who have subscribed that Sum, &c. may assemble themselves at a General Court, timely Notice being given, and make By-Laws, as to them, or the greater Part of them, shall seem meet, for the good Government of the said Company, and of all Persons employed in their Ships and Voyages, and for the Preservation and Improvement of the said Trade; which By-Laws shall be duly kept and observed, under the Pains and Penalties therein limited, so as they be not contrary to the Laws and Customs of the Realm, nor to any Regulations made by this Act.

No private Contract for the Sale of any Goods, shall be made by the Company to any Member thereof; but all Goods belonging to
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the said Company are to be sold publickly by Inch of Candle, once a Year at the least; of which Sales publick Notice shall be given three Weeks before on the *Royal Exchange*, and no Lot be exposed to Sale of more than 300*l.* Value in the Allotment: And the Moneys arising by the Sale of the said Company's Goods, shall be applied to the Advantage of the Joint-Stock, and of the Persons therein concerned, according to their Proportions therein, and not to the private Advantage of any particular Person. And Dividends of the Profits, to be made in Money only.

Persons interested in the Stock may transfer their Shares to Subjects born, Persons naturalized or made Denizens; and such Assignments are to be entered in the Books of the Company, which Books for assigning shall lie open for the View of all Persons concerned: All other Assignments and Dispositions to be void; except Devises by Will, or where Part of the Stock shall come to a Person as Executor or Administrator. No Persons shall agree for, bargain, or sell, any greater Part of the said Stock, than such Sum only as they shall be possess'd of *bona fide*, and have standing in their own Names in the Company's Books. And all Agreements, Contracts, Bargains or Sales, for any Part of the said Stock, not executed within ten Days after such Agreement, &c. shall be void.

This Act is declared to be a publick Act; and that it shall be taken Notice of accordingly. And by 7 & 8 *W. 3. cap. 33.* it is enacted, that the said Company shall not be charged

charged with the Payment of any Custom, Duty, or Imposition whatever, for any Oil, Blubber, or Whale-fins, which shall be caught and imported into this Kingdom, by any Vessels belonging to the said Company.

By the 1 *Ann. cap. 16.* reciting, that the *Greenland* Company had neglected that Trade, for the encouraging and enlarging the same for the Good of this Kingdom; 'tis ordain'd, that it shall be lawful for any of her Majesty's Subjects whatsoever, that will adventure to *Greenland* for fishing for Whales, to have and enjoy all Privileges granted by the Act 4 & 5 *W. & M.* and shall not pay any further or other Duty than if they had been of the said Company; any Law or Statute to the contrary notwithstanding. And no Harpioneer, or other Foreigners that are permitted by the said Act for carrying on the said Fishery, shall be impressed for her Majesty's Service.

The 10 *Geo. I. cap. 10.* enacts, That any Persons may import Whale-fins, Oyl, and Blubber of Whales, taken and caught in the *Greenland* Seas, in *British* Ships navigated according to Law, without paying any Duty; but nothing herein shall be construed to extend to give Liberty for importing such Whale-fins, Oyl or Blubber, Duty-free, unless the Master of the Ship who imports the same, first makes Oath before the Commissioners, or other principal Officers of the Customs in the Port of Importation, that all the said Whale-fins, &c. imported in such Ship, were *bona fide* the Fins, &c. of Fish caught and taken in the *Greenland* Seas, by
the

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the Crew of the same Ship only, whereof the Master and one third Part of the Mariners were *British* Subjects.

And by 6 *Geo. 2. cap. 33.* every *British* Ship of Two hundred Tons, that shall proceed from any Port of *Great Britain* on the Whale Fishery to the *Greenland Seas*, or *Davis's Streights*, and the adjacent Seas, manned and navigated as by Law is directed, shall before she proceeds on such Voyage, be visited by the Officers of the Customs, who shall examine into such Ship, and take an Account of the Tonnage thereof by Admeasurement, &c. And if it appear, that she hath on board such a Number of Men, Provisions, Boats, Fishing-Lines, and Instruments to be used in such Fishery, as herein are mentioned, and hath a sufficient Number of Harponeers, Steersmen, and Line Managers, who have before been employed in such Voyages; and if it further appears, by the Oath of one Owner and of the Master of the said Ship, that it is their Purpose to make a Voyage to the *Greenland Seas*, &c. and there, in the approaching Season, to use their Endeavours to take Whales, &c. and on no other Design of Profit, and to import the Fins, Oil and Blubber into *Great Britain* (naming the Port to which it is their Intention to return) and if the Master become bound with two Sureties, for the faithful Dealing of the said Master and Ship's Company, then three of the Commissioners of the Customs shall and may, on receiving Certificates thereof, grant a Licence to proceed on such Voyage.

Every Ship being Two hundred Tons, design'd for this Fishery, shall have forty Fishing Lines, of One hundred and twenty Fathom each, forty Harpon Irons, four Boats with seven Men (including a Harponeer, a Steersman, and a Line manager to each Boat, making in the whole twenty eight Men besides the Master and Surgeon) with six Months Provisions; and every Ship of larger Burthen, is to have an Increase of six Men, one Boat, ten Lines, and ten Harpon Irons, for every fifty Tons. And on the Return of such Ships, the Master and Mate shall make an Oath before the Collector and Comptroller of the Customs, annexed to the Licences, that they did in Pursuance thereof, on such Day, &c. proceed in a Voyage to the Places aforesaid, and have not since been on any other Voyage, or pursued any other Design of Profit, and that they did there (mentioning the Time of their Stay in those Seas) use their Endeavours to take Whales, and other Fish in the said Seas; and that all the Fins, Oil and Blubber imported in such Ships, were really caught in those Seas by the Crews of the said Ships only.

And then upon Certificate of such Oath transmitted to the Commissioners of the Customs, they shall cause Payment to be made to the Master or Owners of every such Ship, by the Receiver General of the Custom-Duties, at 20*s.* *per* Ton bounty, according to the Admeasurement of the Ship.

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*The Newfoundland Fishery, and other Sea-
Fishing.*

By Statute 10 & 11 *W. 3. cap. 25.* All his Majesty's Subjects residing in this Realm, or the Dominions thereunto belonging, trading to *Newfoundland*, and the Seas, Rivers, &c. in and about the same, or the Islands adjacent, shall have free Trade and Fishery to and from *Newfoundland*, and the Freedom of taking Bait and Fishing in any of the said Seas, Rivers, Lakes, or Places, and to go on Shore there for the curing their Fish, and making Oil, and to cut down Wood for making and repairing of Stages, Ship-Rooms, Train-Fats, Hurdles, Ship-Boats, and other Necessaries; but no Alien shall hereafter take any Bait, or use any Trade of Fishing in *Newfoundland*, or the Islands or Places before mentioned.

Every Fishing Ship from *England, Wales, or Berwick*, or the Master thereof, as shall first enter any Harbour or Creek in *Newfoundland*, shall be Admiral of the said Harbour for that Season, and reserve only so much Beech or Flakes, as are needful for his Boats, and one over; and the Master of the second Ship so entring, shall be Vice-Admiral, and of the third, Rear-Admiral; and the Persons possessed of several Places in several Harbours or Creeks there, shall choose which they will abide in, within forty-eight Hours after Demand of any After-comer: And in Case of any Difference, the Admirals of the Harbours, or any two of them, shall settle the same.

No

No Person shall destroy or deface any Stage, or Cook-Room, or any Thing thereto belonging, but shall use such only as are needful for him, and leave the same undamaged: And no Fisherman, or Inhabitant in *Newfoundland*, or other Person, shall seize or possess any such Stages, &c. which since the Year 1685, did, or shall hereafter belong to any Fishing Ships, before the Arrival of the Fishing Ships from *England*, and until such Ships be provided therewith. But such Persons as since that Time, have built, or hereafter shall build or make any Houses, Stages, &c. for Fishing there, that did not belong to Fishing Ships, shall quietly enjoy the same.

The Master of every By-Boat is to carry with him at least two fresh Men in six, viz. one that hath made but one Voyage, and one who hath never been at Sea before; and every Inhabitant shall employ two such fresh Men, for every Boat kept by them; and the Masters of the Fishing Ships, shall carry with them one fresh Man, that never was at Sea before, in every five Men they carry: And the Masters of such By-Boats, and Fishing Ships are to make Oath before the Collector or principal Officer of the Customs of the Port they sail from, that they have such fresh or green Men as this Act directs, of which they shall have a Certificate *gratis* from such Officers.

No Persons shall erase or alter the Mark of any Boat or Train-Fat, to defraud the Owner thereof, or convert the same to their own Use, or remove or take away the same, without giving Notice to the Admiral of the Harbour. And none shall rind any Trees there

growing, nor set on Fire any of the Woods, or damage the same, except for necessary Fuel for the Ships and Inhabitants, and the Building and necessary Repairs of Houses, Ships, Boats, Train-Fats, and of the Stages, Cook-Rooms, Beeches, &c. nor cast Anchor, or annoy the Hailing of Sayns in the accustomed baiting Places; or shoot their Sayns upon those of others, or steal the Nets or Baits of other Persons: And no Ballast, Stones, or other Annoyance to the Harbours there, shall be thrown out of any Ship or otherwise, but carried on Shore.

The Admirals in every Port and Harbour in *Newfoundland*, are to see the Rules and Orders of this Act for the Regulation of the Fishery duly put in Execution; and to keep a Journal of all Ships, Boats, Stages, Train-Fats, and Seamen in their respective Harbours, and at their Return to *England* shall deliver a Copy thereof to the Privy Council. And all Differences arising in *Newfoundland* between the Masters of Fishing Ships and the Inhabitants there, or the By-Boat-keepers about the Fishing-Rooms, Stages, &c. shall be determined by the Fishing Admirals in the said several Harbours; an Appeal being reserved to the Commanders of the Men of War, appointed Convoys for *Newfoundland*.

And by a former Act 15 *Car. 2. cap. 16.* No Person or Persons whatsoever, shall collect, levy or take in *Newfoundland*, any Poll or other Duty, of or for any Cod, Poor-John, or other Fish of *English* taking, under Pain of forfeiting double the Value of what shall be by them levied, collated, or taken, &c.

If

If any Planter, or other Persons, do cast or lay any Seme or Net, in or near any Harbour in *Newfoundland*, whereby to take the Spawn or young Fry of the Poor-John, or for any other Use, except for taking of Bait only, they shall forfeit and lose all such Semes or Nets, and the Flesh taken in them, or the Value thereof, to be recovered in his Majesty's Courts in *Newfoundland*, or in any Court of Record in *England* or *Wales*, by Bill, Plaint, or other Action.

Any Persons burning, destroying, or stealing any Boat, Cask, Salt, or other Utensils for Fishing or making of Oil, or other Goods or Merchandize, left in any Harbour in *Newfoundland* or *Greenland* by *English*; or burning, pulling down, or destroying any House built by the *English* in *Newfoundland* or *Greenland*, to live in during the Fishing Season, or any Stage built by them in either of the said Places, for the saving or ordering of Fish, or making of Oil; the Persons so offending, shall forfeit double the Value of what shall be by them stoln, burn'd, or destroy'd, recoverable as aforesaid, in any of his Majesty's Courts in *Newfoundland*, &c.

And for regulating the *Iceland* and *Westmony* Fisheries, and Preservation of the Spawn of Fish there, it is ordain'd, that no Ship or Vessel shall proceed upon a Fishing Voyage for *Iceland* or *Westmony*, out of any Port, Haven, or Creek of *England* or *Wales*, until the 10th Day of *March* yearly, on pain of Forfeiture of every such Ship or Vessel, with all her Furniture, Tackle and Apparel, and all Fish caught therein.

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By the 18 *Car. 2. cap. 2.* for the better Encouragement of the Fishery of this Kingdom, it is enacted, that if any Ling, Herring, Cod, or Pilchard, fresh or salted, dry'd or bloated, or any Salmon, Eels, or Congers, taken by Foreigners, shall be imported, uttered, sold, or exposed to Sale here; that then it shall and may be lawful for any Person or Persons to seise the same, the one half thereof to be disposed of to the Use of the Poor of the Parish where they shall be so found or seised, and the other Half to him who shall seise such Fish for his own Use.

And by Stat. 1 *Geo. 1. cap. 18.* no Herrings, Cod, Pilchards, Salmon, or Ling, fresh or salted, &c. nor any Grill, Mackarel, Whiting, Haddock, Sprats, Coal-fish, Gull-fish, Congers, or any Sort of flat Fish, or fresh Fish whatsoever, shall be imported or sold in *England*; which shall be taken by, bought of, received from any Foreigner, or out of any Stranger's Bottom; (except Protestant Strangers residing in this Kingdom) nor shall any Person give or exchange Goods for Fish so taken: And every Master, &c. of any Vessel or Smack, in which any Fish shall be imported or brought to Shore, contrary to this Act, being lawfully convicted thereof, shall forfeit the Sum of 20 *l.* to be levied by Distress and Sale of his Goods, by Justice of Peace's Warrant, and distributed one Moiety to the Informer, and the other to the Poor of the Parish where the Offence was committed; and for want of Distress, shall be sent to the common Gaol, there to suffer twelve Month's Imprisonment.

But nothing herein contained, shall extend to prevent the importing or buying any Eels, Stock-fish, Anchovies, Sturgeon, Botarge, or Cavear ; and it shall be lawful for any Persons, as well Foreigners as *British*, to import into, and sell in *Great Britain*, any Quantity of Lobsters or Turbets, whether of foreign or *British* catching.

And by this Statute, if any Person shall use at Sea, upon the *Coast of England*, any Traul-Net, Drag-Net, or other Sea-Net, for the catching of any Fish, (Herrings, Pilchards, Sprats and Lavidnian excepted) which hath a Mesh less than three Inches and a Half from Knot to Knot, or any false or double Bottom, Cod or Pouch, &c. in order to destroy the small Fish, he shall forfeit such Nets, and 20 *l.* for every Offence, to be recovered and distributed as above mentioned.

All Fish *English* taken, and brought by *English* Bottoms or Vessels into this Realm, are excepted out of the Act 12 *Car.* 2. of Tonnage and Poundage, so as to be free from Duty : And by the same Statute, Herrings and other Sea Fish, taken by Subjects, may be transported in Vessels of the Subjects of this Realm, without paying any Duty for the same.

Also the 5 *Geo.* 1. *cap.* 18. enacts, that certain Rates or Allowances shall be made, as a Bounty, on exporting, Herrings, Pilchards, Codfish, Salmon, &c. for encouraging the Fishing Trade.

Vide Custom-Duties, Vol. 1.

C H A P. V.

Of the Royal African Company of England,

IN the fourteenth Year of the Reign of King Charles the Second, the *Royal Adventurers of England*, trading into *Africa*, had their Charter granted them. They export Iron, Copper, Sheets, Slesies, Perpetuana's, Says, *Welsh* Pans, Cowries, Coral, Callicoes, Nicanians, Amber, Powder, Muskets, *Turkey* Carpets, Brandy, Strong Waters, Spirits, Taffeties, Gingham, Beads, Buckhorn Knives, Swords, Tallow, &c. And they import Gold, Elephants Teeth, Hides, *Guiney* Pepper, Red-Wood, Ambergrease, &c. and a vast Number of Negroes, which they carry to the *American* Plantations.

An Act of Parliament made the 26th of June 1695, for establishing this Company, is very particular and extensive: This Act recites, That the King taking into his Consideration, that by an Act passed in this present Parliament, entitled, *An Act for encouraging foreign Trade*; his Majesty, for the Improvement thereof, did, with Advice and Consent of the Estates of Parliament, enact and declare, That Merchants, more or less, may contract and enter into Societies and Companies, for carrying on Trade to any Kingdoms and Countries of *Europe*, to the *East* and *West-Indies*, and the *Streights*, and to Merchandize in the *Mediterranean*, or upon the Coast of
Africa,

Africa, or elsewhere; which Societies and Companies being contracted, and enter'd into upon the Terms, and in the usual Manner as such Companies are set up and in Use in other Parts, consistent with the Laws of this Kingdom; *his Majesty*, with Consent as aforesaid, did allow and approve, give and grant to them, and each of them, all Powers, Rights, and Privileges, as to their Persons, Rules and Orders, that by Law are given to Companies allow'd to be erected for Trade and Manufactures: And his Majesty for their greater Encouragement, did promise to give to these Companies, and each of them, his Letters Patent under the Great Seal, confirming to them the aforesaid Powers and Privileges, with what other Encouragements his Majesty should judge needful, as the aforesaid Act of Parliament more at large mentions.

And his Majesty understanding that several Persons, as well Foreigners as Natives of this Kingdom, are willing to engage themselves with great Sums of Money, in an *American, African, and Indian Trade*, to be exercis'd in and from this Kingdom, if enabled and encourag'd thereunto, by the Concessions, Powers, and Privileges necessary and usual in such Cases: *Therefore*, and in Pursuance of the aforesaid Act of Parliament, his Majesty, with Advice and Consent of the said Estates of Parliament, doth hereby make and constitute *John Lord Belhaven, Adam Cockburn, &c.* (several Merchants of *England*, and several of *Scotland*) with such others as shall join within the Space of Twelve Months; and all others, whom the aforesaid Persons, and those joined

with them, or the major Part of them, being assembled, shall admit and join into their Joint-Trade (who shall all be reputed as if herein originally inserted) shall be one Body incorporate, and a free Incorporation, with perpetual Succession, by the Name of the *Company of, &c.* trading to *Africa* and the *Indies*.

Provided always, that of the Fund or Capital Stock that shall be agreed to be advanc'd and employ'd by the aforesaid Undertakers and Copartners, the Half at least, shall be appointed and allotted for *Scotish* Men within this Kingdom, who shall enter and subscribe to the said Company before the Day, &c. And if such *Scots* Men, residing within this Kingdom, shall not before the said Time subscribe for, and make up the equal Half of the said Fund, or Capital Stock, then and in that Case, it shall be, and is hereby allow'd to *Scots* Men residing abroad, or to Foreigners, to come in, subscribe and be assum'd for the Residue of the said Half, and not otherwise, like as the *Quota* of every Man's Part of the said Stock, whereupon he shall be capable to enter into the said Company, whether he be Native or Foreigner; the least Subscription to be 100*l.* and the highest or greatest 3000*l.* Sterling. and no more directly or indirectly in any Sort; with Power to the said Company to have a Common Seal, and to alter or renew the same at their Pleasure, with Advice of the King at Arms; as also to plead and sue, and be sued, and to purchase, acquire, possess and enjoy Lordships, Lands, Tenements, or other Estate, real and personal, of what Nature or Quality soever; and to dispose

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dispose of and alienate the same, or any part thereof, at their Pleasure, and that by Transfers, and Assignments, made and entered in their Books and Records, without any other Formality of Law : Providing always, that such Shares as are subscribed for by *Scotsmen* within this Kingdom, shall not be alienable to any other than *Scotsmen* living within this Kingdom ; and that the aforesaid Transfers and Conveyances as to Lands and other real Estate, (when made of those only and apart) be perfected according to the Laws of this Kingdom ; with Power likewise to the aforesaid Company, by Subscriptions or otherwise, as they shall think fit, to raise a Joint-Stock or Capital Fund of such a Sum or Sums of Money, and under and Subject to such Rules, Conditions and Qualifications, as by the said Company, or the Major Part of them when assembled, shall be limited and appointed, to begin, carry on, and support their intended Trade and Navigation, and whatever may contribute to the Advancement thereof,

And it is hereby declar'd, That the said Joint-Stock, or Capital Fund, or any Part thereof, or any Estate, real or personal, Ships, Goods, or other Effects of and belonging to the said Company, shall not be liable unto any Manner of Confiscation, Seizure, Forfeiture, Attachment, Arrest, or Restraint, for and by Reason of any Embargo, Breach of Peace, Letters of Marque or Reprizal, Declaration of War with any foreign Prince, Potentate, or State, or upon any other Account or Pretence whatsoever ; but shall only be transferable, assignable, or alienable in such Manner as aforesaid, by
such

such Parts and Portions, and under such Restrictions and Conditions, as the said Company shall by writing in and upon their Books, Records and Registers direct and appoint: And these Transfers and Assignments only, and no others, shall convey away the Right and Property in and to the said Joint-Stock and Capital Fund, and the Effects thereof, above mentioned or any Part of the same. And that the Creditors of any particular Member of the Company may, by their Diligence, affect the Share of the Profit arising and pertaining to the Debtor, without having any farther Right or Power of the Debtor's Part and Interest in the Stock or Capital Fund, otherwise than as is above ordained; and with this express Provision, that whatever Charges the Company may be put to by the Contendings of the Assignees of Members deceased, Creditors or any other Persons in their Rights, the said Company shall make Retention of their Charges and Expences in the first Place; and the Books, Records, and Registers of the said Company, or authentick Abstracts of the same, are hereby declared to be good and sufficient Evidence in all Courts of Judicature, and elsewhere.

And his Majesty, with Advice aforesaid, farther declares, that the said *John Lord Belhaven, Adam Cockburn, &c.* and others to be joined with them, or assumed by them, in Manner above mentioned, and their Successors, or the Major Part of them, assembled in the said Company, shall and may at all Times, by the Plurality of Votes, agree upon, make, constitute and ordain, all such other Rules and

Ordi-

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Ordinances as may be needful for the better Government and Improvement of their Joint-Stock or Capital Fund, in all Matters and Things relating thereunto; To which Rules, Orders and Ordinances, all Persons belonging to the said Company, as well Directors as Members thereof, Governors, or other Officers Civil or Military, or others whatsoever, shall be Subject, and hereby concluded; as also to take Oaths of Fidelity, and other Oaths requisite for the Management of the aforesaid Stock and Company.

And the said Company is hereby impowered to equip, fit, set out, freight, and navigate, their own or hired Ships, in such Manner as they shall think proper; and that from any of the Ports or Places of this Kingdom (or from any other Parts or Places in Amity, or not in Hostility with his Majesty, in Warlike or other Manner) to any Lands, Islands, Countries, or Places, in *Asia*, *Africa* or *America*; and there to plant Colonies, build Cities, Towns, or Forts, in or upon the Places not Inhabited; or in or upon any other Place, by the Consent of the Natives and Inhabitants thereof, and not possessed by any *European* Sovereign, Potentate, Prince, or State; and to provide and furnish the aforesaid Places, Cities, Towns, or Forts, with Magazines, Ordnance, Arms, Weapons, Ammunition, and Stores of War, and by Force of Arms to defend their Trade and Navigation, Colonies, Cities, Towns, Forts, and Plantations, and other their Effects whatsoever: As also to make Reprisals, and to seek and take Reparation of Damage done by Sea or by Land; and to make and
conclude

conclude Treaties of Peace and Commerce with the Sovereigns, Princes, Estates, Rulers, Governors, or Proprietors of the aforesaid Lands, Islands, Countries or Places in *Asia*, *Africa*, or *America*; provided always, that all Ships employed by them, shall return to this Kingdom with their Effects, under the Pain of Confiscation, Forfeiture, and Seizure of the Ships and Goods, in Case of breaking Bulk before their Return, (except in a Case of Necessity, for preserving any Ship, Company and Loading.)

And his Majesty, with Consent aforesaid, doth further enact and ordain, that none of the Liege Subjects of this Kingdom. shall or may Trade or Navigate to any Lands, Islands, Countries, or Places in *Asia*, or *Africa*, at any Time hereafter, or in *America*, for and during the Term hereby granted to the said Company, without Licence and Permission in Writing from the Company; and all such as shall act contrary, shall forfeit the third Part of the Ship or Goods, and of the Cargo or Cargoes therein, or the Value thereof, one Half to his Majesty, and the other Half to the said Company: For the effectual Execution whereof, it shall be lawful for the said Company, or any Persons employ'd by them, to seize the said Ships and Goods, in any Place of *Asia* or *Africa*, or at Sea on the Coasts of *Asia* or *Africa*, upon Transgression as aforesaid, by Force of Arms, and that without incurring any Crime, for any Thing done in Prosecution thereof; (excepting always, and without Prejudice to any of the Subjects of this Kingdom to trade, during the said Term, to any Part of *America*, where the Colonies, Plantations, or Possessions of the said Company shall not be settled.) And

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And it is hereby farther enacted, That the said Company shall have the free and absolute Right and Property (holding of his Majesty and his Successors in Sovereignty, and as an Acknowledgement paying Yearly a Hogshead of Tobacco, if requir'd) in and to all such Lands, Islands, Colonies, Cities, Towns, Ports and Plantations, that they shall acquire, establish, or possess, in Manner aforesaid; as also in and to all Manner of Treasures, Wealth, Riches, Profits, Mines, Minerals, Fishings, with the whole Product and Benefit thereof, as well under as above the Ground, and as well in Rivers and Seas, as in the Lands thereto belonging, or from or by Reason of the same in any Sort, together with the Right of Government and Admiralty thereof; and that the said Company may, by Virtue hereof, grant and delegate such Rights, Properties, Powers, and Immunities, and permit and allow such Trade, Commerce and Navigation in their Plantations, Colonies, Cities, Towns, or Places of their Possession, as the said Company from Time to Time shall judge fit and convenient; with Power to them to impose and exact such Customs and other Duties upon and from themselves and others trading with, and coming to the said Plantations, &c. as the Company shall think needful for the Maintenance of the same, and other publick Uses; and with Power and Liberty to the said Company, to treat for, and procure and purchase such Rights, Liberties, Privileges, Exemptions, and other Grants, as may be convenient for supporting, promoting, and enlarging their Trade and Navigation from any foreign Prince or Potentate whatsoever,

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in Amity with his Majesty; (for which the general Treaties of Peace and Commerce between his Majesty and such Potentates, Princes, or States, shall be sufficient Security) and if contrary to the said Rights, Liberties, Privileges, Exemptions, Grants, or Agreements, any of the Ships, Goods, Merchandizes, Persons, or Effects whatsoever, belonging to the said Company, shall be stopped, detained, taken away, or in any Manner prejudiced or damnified, his Majesty promises to interpose his Authority, in Order to Restitution, Reparation, and Satisfaction to be made for the Damage done, and that upon the publick Charge, for what his Majesty shall expend on that Account.

And farther it is hereby enacted, That all Ships, Vessels, Merchandize, Goods, and other Effects whatsoever, belonging to the said Company, shall be free from all Manner of Prohibitions; and of all Customs, Taxes, Cesses, Supplies, or other Duties impos'd or to be impos'd, by Act of Parliament or otherwise, for and during the Space of, &c. (Excepting the Duties of Tobacco and Sugar, that are not of the Growth of the Plantations of the said Company.) And it is declared, that the said Company, by Commission under their Common Seal, or otherwise, as they shall appoint, may make and constitute all and every their Directors, Governors, Commanders in Chief, and other Officers, Civil or Military, by Sea or by Land; as likewise, that the said Company may inlist, inroll, agree with, and retain all such Persons, Subjects of this Kingdom, or others whatsoever, as shall be willing and consent to enter into their
Service

Service or Pay; provided always, that they levy none within this Kingdom to be Soldiers, without Leave of his Majesty, or the Lords of his Privy-Council; over which, Directors, Governors, Commanders in Chief, or other Officers, Civil or Military, and others whatsoever, in their Service or Pay, the Company shall have the Power, Command, and Disposition, both by Sea and Land.

And it is farther declar'd, that no Officer Civil or Military, or other Person whatsoever, within this Kingdom, shall impress, entertain, stop, or detain, any of the Members, Officers, Servants, or others whatsoever, of or belonging to the said Company; and in Case the said Company, their Officers or Agents, shall find or Understand, that any of their Members, Officers, Servants, or others aforesaid, be impressed, stopped or detained, they are hereby authorized and allowed to release the Person or Persons so impressed or stopped, in any Part of this Kingdom, either by Land or Water; and all Magistrates, and Officers Civil and Military, and all others, are hereby required to be aiding and assisting, &c.

And lastly, all Persons concerned, or to be concerned in this Company, are hereby declared to be free Denizens of this Kingdom; and that they, with all who settle to Inhabit, or as are born in any of the aforesaid Plantations, Colonies, Cities, Towns, Factories, and other Places, that shall be purchas'd and possess'd by the said Company, shall be reputed as Natives of this Kingdom, and have the Privileges thereof; and generally, without Prejudice of the special Provisions aforesaid, his Majesty,

Majesty, with Consent aforesaid, hereby gives and grants to the said Company, all Powers, Rights, and Privileges, as to their Persons, Estates, Goods, and Effects, Rules, and Orders whatsoever, that by the Laws are given to Companies, allowed to be erected for Manufacturies, or that are usually given in any other Civil Kingdom, or Commonwealth, to any Company there erected for Trade and Commerce.

And for the better Establishment, and greater Solemnity of this Act and Gift in Favour of the said Company, his Majesty doth farther ordain Letters Patent to be made out hereupon, containing the whole Premisses under the Great Seal of this Kingdom, for doing whereof, these Presents shall be sufficient Warrant to the Chancellor or Keeper of the Great Seal, as usual in like Cases.

By the Statute 9 & 10 W. 3. c. 26. The Royal *African Company*, shall maintain all Forts and Castles in their Possession, or which they shall hereafter purchase or erect for the Preservation of the Trade to *Africa*; and shall supply them with Men, Artillery, Ammunition, and Provision, and all other Necessaries, as Occasion shall require.

And any of the Subjects of this Realm, as well as the said Company, may trade from *England*, or any of his Majesty's Plantations in *America*, to the Coast of *Africa*, between *Cape Mount* and the *Cape of Good Hope*; the said Company, and all others, answering a Duty of 10 *l. per Cent.* for the Goods and Merchandize exported thither from *England*, or from the said Plantations, for maintaining the said Castles and Forts, and preserving the said Trade.

The

The Master, Owner, or Freighter of every Ship intending to Sail or Trade between *Cape Mount*, and the *Cape of Good Hope*, shall at one of the Chief Custom-houses in *England*, or the Plantations from whence such Ship is to Sail, enter the Name of the Master and Ship, and the Burthen thereof so freighted; and the Owner or Exporter shall there also enter upon Oath the Quantity, Quality, and Value of the Goods and Merchandizes, so to be shipped, and sign such Entry; and thereupon pay the said Duty to the Collector or Chief Officer of the Customs there, who is to demand and receive the same for the Use of the said Company: And all such Goods and Merchandize exported from *England* to the Plantations, and from thence to *Africa*, shall be valued at no more than what they cost in *England*.

And upon exporting any Goods or Merchandize from the Plantations to *Africa*, that were there imported from *England*, the Owner or Exporter shall swear, that to the best of his Knowledge and Belief, such Goods so entered were imported from *England* into that Colony or Plantation; and that the true and real Value thereof, as cost in *England*, is fully expressed in the said Entry: And the Master of the Ship, or one of the Owners or Freighters, before such Ship be cleared, shall give Bond to his Majesty, to the Value of the Ship and Lading, that the said Ship (not unavoidably hindered) shall sail directly to *Africa*, between the Capes aforesaid, and thence directly return to, and unlade in *England*, or one of the said Plantations. And the Collector

or other Chief Officer of the Customs, is to take such Bond, and keep a distinct Book of all Entries and Duties payable for the Use of the Company; and to deliver the said Company, a Duplicate of such Entries and Oaths, and Bonds given, with the Moneys paid; and shall also pay to the said Company the Moneys so received, deducting 5 *l. per Cent.* for his or their Trouble.

Any of the Subjects of this Kingdom, as well as the *African* Company may likewise Trade from *England* or any of the Plantations in *America*, to the Coast of *Africa*, between *Cape Blanco* and *Cape Mount*, paying 10 *l. per Cent. ad valorem* for the Goods and Merchandize so exported to the said Coast; and paying a further Sum of 10 *l. per Cent.* (except for Red Wood, which is to pay but Half as much) at the Place of Importation, for all Goods and Merchandize (Negroes excepted) imported into *England*, or the Plantations from *America*, between *Cape Blanco* and *Cape Mount* aforesaid: And every Master of a Ship and Trader trading from *England* or the Plantations between the said Capes; shall make like Entries and Oaths, and give the like Bonds as is directed for Masters and Traders between *Cape Mount* and the *Cape of good Hope*; and upon such Entry and Oath shall pay the Duty aforesaid; and the Collector or Chief Officer of the Custom-houses from whence such Ships shall be dispatched, are to take such Entries and Bonds, and give such Oaths, and receive the Duties, and pay the same to the said Company on Demand, for the Uses before directed; and the said

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Collector

the Royal African Company. 99

Collector or Officer may deduct for his or their Trouble 5*l.* per Cent. out of these Duties, except for the Exports and Imports of the said Royal African Company.

And all such Goods and Merchandizes brought from between *Cape Blanco* and *Cape Mount*, as shall be landed before Entry made and signed, and Oath of the Value thereof made, and the Duty paid, shall be forfeited, or the Value : Also every Ship which, contrary to this Act, shall sail from *England* or the Plantations, for the Coast of *Africa*, without being duly entered, Oath made, and Bonds given, (as before directed) shall be forfeited, or the Value thereof, with the Goods and Merchandize, &c. And every Ship, and all the Goods and Merchandizes therein, belonging to his Majesty's Subjects, sailing from any other Parts than from *England*, or the Plantations, to the Coast of *Africa*, as aforesaid, shall be forfeited. One Third Part of the said Forfeitures to be to his Majesty, one Third Part to the said Company, towards Maintenance of the said Forts, &c. and the other Third Part to the Informer or Prosecutor.

All the natural born Subjects of *England*, trading to *Africa*, and paying the Duties by this Act imposed, shall have the same Protections for their Persons, Ships and Goods, from the said Forts and Castles, and like Freedom for their Trade, as the said Company, and their Ships and Goods have : And all Persons trading to *Africa*, and paying the Duties aforesaid, may at their own Charge settle Factories in any Part of *Africa*, within the

Limits aforesaid: Also all Persons, not Members of the said Company, so trading, and paying the said Duties, shall with their Ships and Goods be free from all Molestation, Penalties, or Impositions from the said Company, by Reason of their so trading.

And all the Duties arising by this Act, are hereby appropriated wholly to the Maintenance of the Forts and Castles on the Coasts of *Africa*, in the Possession of the said *African* Company, and for keeping them well repaired, and providing them with Ammunition and Warlike Stores, and Soldiers to defend them, and paying the Officers and Soldiers, and to no other Uses whatsoever: And a true Account of the said Duties, and laying out the same, shall be kept in a Book for that Purpose, which shall be open at the *African* House in *London*, to be perused by all Persons trading to *Africa*; and an Account shall be made up yearly at *Michaelmas*, or within twenty Days after, and recorded in the *Exchequer*, where the Cursitor Baron may examine Persons on Oath thereupon.

But no Duty imposed by this Statute shall be required in *England*, or the Colonies aforesaid, for any Gold or Silver imported from *Africa*, but the same may be landed without Entry or Declaration thereof: And this Act shall not hinder any Person from Trading to that Part of *Africa* called *Barbary*, extending Southerly as far as *Cape Blanco*; and it shall be in Force only thirteen Years, and from thence to the End of the next Session of Parliament.

The

the Royal African Company. 101

The Statute 10 *Ann. cap.* 27. Enacted, in Consideration of the Losses and Disappointments the Company met with, that two Third Parts, or more, in Number and Value, of all the real Creditors of the *African Company*, their Executors, &c. Trustees, or any other Persons authorized by them, by any Writing under their Hands and Seals, were to allow the said Company Time for Payment of their Debts, or to make any other Agreement with the Company touching their said Debts; and such Agreement to be effectual, and bind and conclude all the Company's Creditors, &c. saving to the Crown, all Debts, or Sums of Money, due from the said Company, by Extent, Inquisition or otherwise, before the First of *June* 1712.

In divers late Acts for appropriating the Land Tax and other publick Money, 10,000 *l.* a year is applied towards Maintenance of the *British* Forts and Settlements belonging to the Royal *African Company* on the Coast of *Africa*. Stat. 4, 5, 6, 7, 8, & 9 *Geo.* 2.

C H A P. VI.

Of the East-India Company of Merchants.

THE United Company of Merchants of *England* trading to the *East-Indies*, is the most considerable and flourishing Company of Trade in this Kingdom, and the greatest

in *Europe* for Riches, Power and extensive Privileges; as appears by the many Ships of Burthen which they constantly employ; the very advantageous Settlements they have abroad; their large Storehouses, and Sales of Goods and Merchandizes at home; and the particular Laws and Statutes made in their Favour.

And the Merchants and other Traders in this profitable Company, export Pieces of Eight, &c. Broad Cloth, Perpetuana's, Powder, Lead, Amber, Looking-Glasses, Knives, Scissars, Beads, Bracelets, Quick-Silver, Coral, Vermillion, Allom, Brimstone, &c. And import Spices, Callicoes and Muslins, unstain'd Pintadoes of divers Sorts, Tamerines, Spicknard, Bezoar-Stones, Aloes, Myrrh, Rhubarb, Opium, Frankincense, Borax, Cassia, Mirabolaus, Calamus, green Ginger, Camphire, Sandal Wood, Benjamine, Musk, Civit, Ambergrease, Rice, Indico, Raw Silks, curious Cabinets, Pearl and Mother of Pearl, Diamonds and other precious Stones, Cornelian Rings, fine China Ware, Furs, Skins of Wild Beasts, Copper, Porcelain, China-roots, Sanguis Draconis, and other rich Drugs.

I have already observ'd, that in the Reign of King *William* the Third, a new Company trading to the *East-Indies* was incorporated by Act of Parliament, they having advanced the Government Two Millions of Money, for which they at first receiv'd Interest after the Rate of 8 *l. per Cent.* out of the Funds assign'd for the same; (but that Interest hath been sunk by subsequent Statutes to 6 and 5 *per Cent.*) After this, the old and new Companies

panies having a due Regard to their common Interests; for the Prevention of divers Inconveniencies that might otherwise have happen'd, both to themselves and the Nation in general, they agreed upon several Articles for the Union of the said Companies, in Manner following, *viz.*

It was agreed, that the Effects of each Company should be brought home with all convenient Speed, for their separate Accounts; and all possible Provisions made for enabling both the Companies to bring home the same with Security; and that neither the Crown, nor the new Company, take any Advantage of the old Company, under Pretence of Forfeiture: And that each Company give a Release to the other, and to their respective Factors and Servants.

The old Company's 315,000 *l* in the Funds, upon the Execution of this Agreement, to be immediately united to the Capital Stock of the new Company: And that the old Company purchase of the new Company, to be transferr'd by three of their Members, in their Politick Capacity, 673,500 *l*. in the Capital Stock and Fund of 1,662,000 *l*. with the Benefits to arise thereby; so that the Old Company may have 988,500 *l*. in the said Fund, which will make that Company equal with the New in Fund and Title to the Trade. And which Stock of 673,500 *l*. shall be transferr'd at four several Times, each fourth Part to be paid for at the Time of the Transfer, at 100 *l*. for 100 *l*.

That the Old Company's dead Stock at home and abroad be valued at 33,000 *l*. and

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the New Company's dead Stock abroad and at home, at 70,000*l.* And that the Old Company at the Time of transferring the first one fourth Part of the said 673,500*l.* do transfer all their dead Stock abroad and at home, to the New Company; the New Company paying for one Moiety thereof at the same Time 16,500*l.* And that the Old Company shall also pay to the New Company 35,000*l.* for the Moiety of their dead Stock; and thereupon the Old Company shall have and be entitled to a Moiety of both the said dead Stocks, as Members of the New Company.

The Members of the New Company transferring, shall be entitled to the Arrears of their Annuity until the Time of the several Transfers; after which, all Annuities arising by the Old Company's 315,000*l.* shall be paid to such Persons as shall be appointed for that Purpose, by the said Old Company, for their Use: And the New Company shall have the Benefit of, all Money arising by Licences granted before their Agreement; and also 5*l. per Cent.* on all Ships enter'd or clear'd out, before the executing of the said Agreement; and the 5*l. per Cent.* that shall arise upon the Effects loaden on the Old Company's Ships, shall be wholly for the Benefit of the said Old Company. And from and after the Execution of this Agreement, each Company is to desist from any separate Exportation.

That during seven Years each Company shall have an equal Power in the Administration and Management of the Fund and Trade; and to that End, twelve Persons shall be yearly appointed by the General Courts of
each

each Company respectively, out of the Courts of Committees and Directors of the said Companies, who shall be called in the new Charter, *Managers of the United Trade to India*: And a new additional Stock shall be rais'd for carrying on the future Trade, and be advanc'd in such Proportions as the said twenty-four Managers, or the major Part of them, shall from Time to Time appoint; the General Courts of each Company agreeing thereunto.

The Old Company during the Space of seven Years, shall preserve their Stock in their politick Capacity, and for that Time remain a separate Corporation, so as to transfer and assign in their own Books, as now they do; and at the End of the said seven Years, the Old Company shall transfer and assign in the Books of the New Company, their Share in the Fund to their several Members, who shall be then entitled to the same; and thereon the said Members of the Old Company shall become, and be admitted Members of the New Company *gratis*.

That each Company shall indemnify the other, from their respective Debts and Demands; and a proper Provision be made for that Purpose: And that the New Company, after the executing their Agreement, shall not take up any Money upon their Common Seal, or do any other Act, (except what relates to their separate Effects as aforesaid) without the Concurrence of the Old Company.

A Covenant to be enter'd into, that his Majesty should make a Re-grant, within ten Days after the making such Assignment, as aforesaid: And that the Old Company within one Month

Month after the said seven Years are expir'd, shall surrender their Charters and Corporation; and also that the King within ten Days after such Surrender, shall make a new Grant to the same Trustees, and subject to the same Trust, of all such Estates and Effects of the Old Company, as shall come to or devolve upon the Crown, by Reason of the said Surrender.

That immediately from and after the said Surrender, the New Company shall change its Name, and be call'd, *The United Company of Merchants of England trading to the East-Indies*; nevertheless, the future Management of the said Stock and Trade, after the said Term of seven Years is expir'd, is to be according to the New Company's Charter of the 5th of September, 1698. And for the better attaining of the Purposes aforesaid, that there be a tripartite Indenture executed by his Majesty, and both the said Companies; wherein such Covenants and Provisions may be made, as shall be thought reasonable, with proper Releases from his Majesty to each Company: So that, as soon as the aforesaid seven Years, allow'd for the Conveniency of Affairs on both Sides are expired, the two Companies may be entirely one, in Name and Effect.

By Statute 9 & 10 W. 3. cap. 44. for raising a Sum not exceeding Two Millions, and settling a Trade to the *East-Indies*, it is enacted, That Commissioners shall be appointed for taking Subscriptions from any Persons, (except the Bank of *England*) for any Sum not less than 100 l. &c. and each Subscriber to have an Annuity at the Rate of 8 l. per Cent.

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per Annum, for the Sum subscribed : And the King is empower'd, by Letters Patent under the Great Seal, to incorporate the Subscribers who have paid their Parts, their Executors, Administrators, Successors or Assigns, with perpetual Succession, and a Common Seal, and with Power to purchase Lands, to plead and be impleaded, and do all other Things by the Name of their Corporation.

The Sum Total of all the Subscriptions, shall be called the principal Stock of the said Corporation; and all Persons shall have a Share therein, in Proportion to their Subscription: Subscribers of 500 *l.* and upwards, may meet and choose twenty-four Trustees, by Way of ballotting; but no Elector shall have more than one Vote, nor any of the Trustees have less than 2000 *l.* subscribed in their own Right. And after the Charter is passed, the yearly Sum of 160,000 *l.* arising by the Duties on Salt imported, and made in *Great Britain*, and on Stamp'd Paper, &c. granted by this Act, shall be paid to the general Society, or their Treasurer, in Trust for the respective Members, as a Fund for answering their Annuities.

All the Subscribers, and Persons licensed by them in their Stead, may trade to the *East-Indies*; but none to Trade by himself, or others, in any one Year, for more than the Amount of his Stock: And Members of the Company, &c. are not to Trade otherwise than in the Joint-Stock thereof; and they shall take an Oath before two or more of the Trustees to be faithful to the said Company, and not trade to the *Indies* upon any private Account,

Account, &c. Also the Company may make By-Laws, by Virtue of their Charter, for the Good of the said Trade.

No Company, or particular Persons, shall Trade to the *East-Indies*, before Security given to the Commissioners of the Customs, That all the Goods to be laden by or for them in the *Indies*, shall be brought to *England* without breaking Bulk; the Danger of the Seas, Pirates, &c. excepted: And all Goods imported by the Company or other Traders, shall be sold openly by Inch of Candle, on Pain of forfeiting the same, or the Value thereof, one Moiety to his Majesty, the other to the Prosecutor. His Majesty's Charter shall direct in what Manner the Shares in the yearly Fund, and in the Stock in Trade, shall be assigned or transferred: The Stock shall be esteemed in Law Personal Estate, and descend accordingly; and the Annuities issuing out of the yearly Fund, and the Shares in Trade, shall be exempt from Taxes.

Persons trading to the *East-Indies*, not entitled to the same by this Act, shall forfeit Ship and Goods, and double the Value, one fourth Part to the Prosecutor, and the other three Parts to the General Society or Company, they bearing the Charge of Prosecution. And an additional Duty of 5*l. per Cent.* shall be laid on all *East-India* Goods imported, by any Persons pursuant to this Act, to be paid over to the General Society, or such Companies as may be erected, or their Treasurers, for the maintaining of Ambassadors, &c. and defraying any other extraordinary Expences, in carrying on the said Trade; and if there

there be any Overplus, the same to be disposed to the Benefit of all the Members.

The General Society, nor any Company establish'd in Pursuance of this Act, shall not borrow or give Security for any Sums of Money on the Credit of the Funds by this Act granted; nor borrow, owe, or give Security for any other or greater Sums, then shall be employed in their Trade, (which shall be borrowed only on their Common Seal, and not repayable in less than six Months) nor discount any Bills of Exchange, or other Bills or Notes, or keep Books or Cash for any Persons whatsoever, other than their own Corporation or Society.

And the present *East-India* Company shall pay their just Debts, and their Estate be liable thereto; and if they make any Dividend before the full Payment of their Debts, the respective Members shall be answerable, so far as their Shares upon such Dividends shall extend to pay, besides double Costs of Suit. Every Society, or Company to be erected pursuant to this Act, shall take Care not to owe at any one Time more than the Value of their Capital Stock undivided; and in Case by any Dividends, their Debts at any Time exceed their Capital Stock, the several Members are to be liable as far as the Shares they received thereupon will extend, &c.

In this Act, there is a Proviso, that upon three Years Notice, and Repayment by Parliament of the said Two Millions, raised and advanced as aforesaid, and all the Arrears of the aforesaid Annuities; then all Duties, Annuities, and Things granted by this Act, with

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with the Benefit of Trade hereby given, &c. shall cease and determine.

The 6 *Ann. cap. 17.* enacts, that the *English* Company trading to the *East-Indies* shall advance and pay into the Exchequer 1,200,000 *l.* on several Days appointed; and in Case of Failure by the said Company, the Moneys not paid shall be recovered by Action of Debt, and 12 *per Cent.* Damages: And the said Company may borrow Money by their Common Seal, on Security of their united Stock, so as the principal Money at any Time to be owing don't exceed 1,500,000 *l.* above what might lawfully be borrowed thereon before this Act.

In Case the General Court of the Governor and Company of Merchants of *London* trading to the *East-Indies*, and the Court General of the said *English* Company, whilst they separately continue, &c. shall think fit to call in Moneys from their respective Adventurers, towards raising the said 1,200,000 *l.* or repaying the Money borrowed for that Purpose, they are impowered to make such Calls accordingly, to make up the said Sum: And if any Members shall neglect or refuse to pay their Shares of the Moneys call'd in, or which the said Companies in Pursuance of the Statute 9 *W. 3. cap. 44.* or their Charters, shall call in for carrying on their Trade (after Notice fixed on the *Royal Exchange*) then the said Companies respectively may stop the Dividends payable to such Members, and apply the same towards such Payment, until it be satisfied; and also stop the Transfers of the Shares of such Defaulters, and charge them
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the East-India Company. 111

with Interest at 5*l.* per Cent. 'till Payment; in neglecting which in three Months, the Companies may sell so much of the Defaulters Stock, as will pay the same.

The aforesaid Sum of 1,200,000*l.* shall be deemed to be an Addition of the Stock of the *English* Company, and be Tax free: The United Stock of the said *English* Company shall be subject to the Debts contracted by the said Company. And Persons entitled to 7,200*l.* Part of the Two Millions, the original Stock, who have not united their Stocks to the Corporations, and who are authorized to carry on a Trade for their separate Use, may hold and enjoy their Trade as if this Act had not been made: But the *English* Company may repay the same at the End of three Years, together with the Annuities due thereon, and then the whole Trade shall be vested in the said Company.

Matters in Difference between the two Companies, concerning an Union between them, are referr'd to *Sidney* Earl of *Godolphin's* Arbitration; and after the making of the said Award, and Surrender of the Charter of the Governor and Company of Merchants of *London*, trading to the *East-Indies*, the Persons who at the Time of the Surrender, pursuant to an Indenture tripartite, made between the Queen of the first Part, the said Governor and Company of the second Part, and the said *English* Company of the third Part, shall be Directors and Managers of the United Trade of the *English* Company, shall be such until new Directors are chosen, according to the Charter dated 5 September, 10*W.* 3.

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This Act hath also a Proviso, that on three Year's Notice after a Time limited, and Repayment of the Two Millions, and 1,200,000 *l.* and of all Arrears then due for the Annuities, which Annuities amount to 160,000 *l. per Ann.* then the aforesaid Duties on Salt, &c. and the Benefit of Trade given by this and the former Act and Charters, to cease. This Proviso of Redemption, is enlarged as to the Time, by Stat. 10 *Ann. cap. 28.*

By the 10 *Ann. cap. 29.* the *East-India* Company may enter such Goods as they shall import, at the Custom-house, by Bills at Sight, or Sufferance; and shall give Security under their common Seal, for Payment of the Customs and Duties as are rated in the Book of Rates, and upon Coffee, which is to be ascertained by the Oath of the Importer, *viz.* for paying Half thereof at the End of six Calendar Months, and the other Half at the End of twelve Months: And the Custom Officers shall grant to the said Company such Bills at Sight or Sufferance, and take Security as aforesaid, and make such Allowances and Deductions as are made to other Merchants paying their Customs, at or before the landing of their Goods and Merchandize.

But nothing herein contained, shall extend to alter the Method of paying the Duties of Fifteen *per Cent.* on Muslins and Callicoos; or the Duties on any other Goods, that are to be ascertain'd by Sale at the Candle.

The Statute 5 *Geo. 1. cap. 21.* ordains, that if any subjects shall sail, or go to the *East-Indies*, or such Places of *Asia*, &c. beyond the Cape of *Bona Esperanza* to the Streights of *Magellan*, where any Trade or Traffick of
Merchan-

Merchandize is or may be used or had, contrary to the Laws in Being, or the Tenor of this Act, every Person so offending shall be liable to the Punishment inflicted by Law for such Offence: And it shall be lawful for the United Company of Merchants of *England* trading to the *East-Indies*, and their Successors, to arrest and seize such Persons, being Subjects of the Crown of *Great Britain*, at any Places, where they shall be found within the Limits aforesaid, and to send them to *England*, there to answer for their Offences, according to due Course of Law.

Every Person who shall procure, solicit, obtain or act under any Commission, Authority or Pass, from any foreign Prince, State or Potentate, to Sail or Trade in or to the *East-Indies*, or any the Parts aforesaid, shall forfeit 500*l.* the said Penalties and Forfeitures to be sued for and recovered in any Court of Record at *Westminster*, by Bill, &c. one Moiety to the Informer, the other to the Crown.

And by 9 *Geo. I. cap. 26.* If any Subject of his Majesty shall contribute to, or encourage the establishing or carrying on any foreign Company, trading from any Part of the *Austrian Netherlands*, to or from the *East-Indies*, and other Places beyond the *Cape of Good Hope*, described in former Acts for securing the sole Trade thither to the United *East-India* Company of *England*, or shall be interested in any Share of the Stock, or Actions of any such foreign Company; or shall make any Payments in Money, or by Bills of Exchange, or otherwise, towards promoting or supporting such Company, or the Trade thereof; or shall subscribe to the establishing of any other

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foreign Company, for Trading to the *East-Indies*, or be concern'd in any Stock therein, &c. the Persons so offending, shall forfeit their Interest and Share in the Stocks of any such Company, with treble the Value thereof; one Third to the Crown, and the remaining two Thirds to the *East-India* Company, if they inform or sue for the same; otherwise one Third of two such Thirds to the common Informer, recoverable by Action of Debt, &c.

And the Attorney General, of his own Authority, or at the Relation of the said United Company, and for the Company, may file a Bill of Complaint in the Court of Chancery, or the Exchequer, against any Person who shall have subscribed or contributed to, or promoted, or any ways become interested in the establishing any such foreign *East-India* Company, or the Stock or Trade thereof, for the Discovery of his Offence; remitting or waving the Forfeiture of the treble Value of the Offender's Stock or Concern in any such Company, and insisting only on the single Value: And thereupon such Person shall answer to the Bill, and not plead or demur to the Discovery thereby sought; and in Case the single Value only of such Interest or Share shall be decreed to be paid, one third Part thereof shall go to his Majesty, and the other two Thirds to the Company.

If any Subject shall have accepted of any Trust, or know of any Interest, Share or Concern, which any of his Majesty's Subjects shall have or be entitled to in any such foreign Company, and shall not within six Months after accepting the Trust, or the coming to
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the Knowledge of any such Interest, &c. truly discover the same in Writing to the said United Company of *England*, or their Court of Directors, he shall forfeit treble the Value of the Interest, &c. so accepted in Trust, or so known, and not discovered; one Moiety to the Crown, and the other to him who will sue for the same, by Action of Debt, &c. or such Offender shall, at the Discretion of the Court where the Prosecution is commenced, suffer one Years Imprisonment. And Persons that within the Time above limited, shall voluntarily come to the Court of Directors, and make a true Discovery in Writing, of the Interest, Share or Concern of any Subjects in the Stock of such foreign Company, shall have one Half-Part of the clear Amount of the Forfeitures arising by this Act.

In case any of his Majesty's Subjects, (other than such as are lawfully authorized) shall go to or be found in the *East-Indies*, they are hereby declared to be guilty of a high Misdemeanor, and may be prosecuted for the same in any Court at *Westminster*; and being convicted thereof, shall be liable to such corporal Punishment, or Imprisonment, or to such Fine as the Court where the Prosecution is commenced, shall think fit. And the Offenders may be seized and brought to *England*; and any Justice of Peace may commit them to the next County Gaol, 'till sufficient Security be given by natural-born Subjects or Denizens, to appear in Court, &c. and not to depart out of the Kingdom, without Leave.

All Offences against this Act, or against
9 *W. 3. cap. 44.* or the 5 *Geo. 1. cap. 21. &c.*

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shall be laid in *London* or *Middlesex*, at the Pleasure of the Prosecutor; and a *Capias* in the first Process shall issue upon any Bill, Complaint, Indictment, &c. prosecuted for the said Offences.

The 7 *Geo. 1. cap. 21.* for the further preventing unlawful trading to the *East-Indies*, and securing the lawful Trade thereto, &c. hath ordained, That all the Goods shipp'd on board any Ship bound to the *East-Indies*, (except Goods of the Company, or such as are licensed by them, and Naval Stores, Provisions and Necessaries for the Ship in her Voyage) and all Goods taken out of such Ship in her Voyage homeward from the *East-Indies*, &c. to *England*, before her Arrival here, shall be forfeited and double Value; and the Master, or other Officer of the said Ship, knowingly permitting the Goods to be shipped, or taken out of such Ship, shall forfeit for every Offence 1000*l.* and shall not be entitled to any Wages, &c.

Agreements and Contracts made or entered into by any of his Majesty's Subjects, or any in Trust for them, on the Loan of Moneys by Way of Bottomry upon any Ship in the Service of Foreigners, and bound to the *East-Indies*, &c. and all Contracts for loading or supplying any such Ship with a Cargo of any Sort of Goods, Merchandize, Treasure or Effects, or with Provisions, Stores or Necessaries; and Co-partnerships enter'd into, relating to any such Voyage, or the Profits thereof; and all Agreements for the Wages of Persons serving on board any Ship to be employed in such Voyage, shall be void. And every Person, Subject of his

his Majesty, that shall go to the *East-Indies*, contrary to the Laws now in Force, shall be deemed a Trader, and to have Traded there; and all the Goods there bartered or trafficked for, or purchased by any such Person, or found in his Custody, or of any other in Trust for him, by his Order or Procurement, shall be forfeited, and double the Value.

And by this Act, it shall be lawful for the Attorney-General, or for the united Company trading to the *East-Indies*, at any Time within the Space of six Years, to file in any of the Courts at *Westminster*, Informations against clandestine Traders; and if the Defendants shall be found guilty thereof, the Court shall forthwith proceed to give Judgment against them, &c. Also it is declared lawful for the Attorney-General, at the Relation of the Company, or by his own Authority, to exhibit Bills of Complaint in the Exchequer, against Persons trading, dealing, trafficking or adventuring to or from the *East-Indies*, &c. contrary to Law; or against any Person concerned as Agent, or Factor to, or Copartner with such illegal Traders, for Discovery of such their Trading, &c. and for the recovering of the Duties and Damages, &c.

And such Persons shall pay to his Majesty the Customs of the Goods arising or purchased by the said unlawful Trade, and shall answer to the Company 30 *l. per Cent.* according to the Value thereof in *England*: And if such Offenders pay the Customs, or the amount of the same into the Exchequer, and Damages to the Company, they shall not be otherwise prosecuted by this Act, or on any other Sta-

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tute for the same Offence. But if a Decree be obtained against the Defendants, they shall pay Costs to his Majesty and the Relator respectively; and if such Bills (being exhibited at the Relation of the Company) be dismissed by the Court, so that the Parties are acquitted, the Company shall pay every Defendant his full Costs.

The Forfeitures and Penalties herein before appointed, or in former Acts, relating to the *East-India* Company, may be sued for not only by the Attorney-General, or the said Company, but also by any Officer of the Customs, such Officer having the Consent and Direction of the Court of Directors of the united Company, as by the Act is particularly required: And one Third Part of all such Penalties shall be to the Crown, one other Third to the Company, and the remaining Third to the Use of such Officers of the Customs as shall inform and sue as aforesaid.

The said united Company shall be allowed to ship out Stores, Provisions, Utensils of War, and Necessaries for maintaining their Garrisons and Settlements, free of all Duties; so as the Duties, if they had been to be paid, do not exceed in any one year 300*l.* no *East-India* Goods to be imported into *Ireland* or the Plantations, but from *Great Britain*, on Pain of forfeiting Ships and Goods, &c.

By the Statute 3 *Geo.* 2. *cap.* 14. After reciting several Acts and Proviso's, and Charters and Agreements, &c. relating to the united Company of Merchants of *England* trading to the *East-Indies*, it is enacted, That in Pursuance of their late Agreement, the said Company

pany shall pay into the Receipt of the Exchequer, on or before a certain Day appointed, the Sum of 200,000 *l.* to be applied towards the Supplies granted to his Majesty; for which no Interest shall ever be payable to the Company, nor any Addition be made to their Capital Stock, or Debt from the Publick on Account thereof; nor shall the same, or any Part of it, be repaid to the Company.

And after the twenty-ninth of *September* 1730. the Annuity or yearly Fund of 160,000 *l.* shall be reduced to 128,000 *l.* in respect of the Capital-Stock or Debt of 3,200,000 *l.* which reduced Annuity shall be charged on the same Duties and Revenues, by the like weekly or quarterly Payments, and with the same Provisions for making good Deficiencies in the said reduced Fund, as their present Annuity or Fund is now charged on, 'till some new or other Provision shall be made by Parliament with Consent of the Company. But upon one Years Notice to be given by Parliament, after the twenty-fifth of *March* 1736, on the Expiration of that Year, and on Repayment of the said Debt of 3,200,000 *l.* to the Company, and all Arrears of their reduced Annuity of 128,000 *l.* which shall be due at the End of the said Year; then and from thenceforth, their said Annuity or yearly Fund shall cease, and be no longer payable.

At any Time, on a Years Notice after the said 25th of *March* 1736, given by Parliament, at the said Years Expiration, upon Repayment to the Company, of any Sum not being less than 500,000 *l.* in Part of the Capital-

Stock of 3,200,000 *l.* and on Payment of all Arrears, which shall be then due on their reduced Annuity; after such Payments made, so much of the said Annuity as shall bear Proportion to the Money so paid in Part, shall cease and be abated; and so from Time to Time upon such yearly Notices, and Payment of such other Sums in Part of the said Capital-Stock, 'till the whole of their Annuity shall be entirely sunk and determined.

Notwithstanding any such Redemption, all Persons intituled to any Interest in the said Capital-Stock, Stock in Trade, or Money paid in for carrying on the same, or in the Factories, Settlements, Lands, &c. belonging to the united Company, shall be and continue a Body Politick and Corporate, &c. and have perpetual Succession, and they and their Successors shall be capable in Law to purchase Lands, &c. (not exceeding at any one Time, the Yearly Value of 10,000 *l.* in the Kingdom of *Great-Britain*) and also to alien the same, and may enjoy all Privileges, Stocks and Estates, and Advantages, &c. which are not hereby altered, as by former Acts, or Charters founded thereon, the Company might hold or enjoy the same: And after such Redemption of the said Yearly Fund, or of one Moiety thereof, the Company may at their General Courts declare how much and what Share in the remaining Capital-Stock, &c. shall Qualify Members of the said Company to be Directors, or to give Votes in any General Court.

And notwithstanding such Redemption as aforesaid, the Company shall, subject to the
Proviso

Provifo of Determination herein after contained, enjoy the whole and sole Trade to the *East-Indies*, and have the only Liberty of Trading thither, &c. And the *East-Indies*, or Islands, &c. within the Limits of the said Company, shall not, before the said Determination, be failed to by any other of his Majesty's Subjects; and if any of the said Subjects, other than the Factors, &c. of the united Company, shall at any Time fail, trade, or adventure to or from the *East-Indies* and Parts aforesaid, they shall incur the Loss of all Ships which shall be employed in such Trade, &c. and the Goods laden therein, and double the Value thereof; which Forfeitures shall be sued for, recovered, and distributed, as by 7 *Geo. 1. c. 21.* is directed, concerning the Penalties and Forfeitures mentioned in that Act.

The said Company, shall at all Times hereafter have all the Powers which by any Charters, &c. are granted them, and not altered by this Act, freed and discharged from all Provifoes of Redemption, &c. as fully as if the same were here severally repeated; but subject to the Restrictions contained in the Acts and Letters Patents now in Force, and also to the Provifo following, *viz.* Provided, That upon three Years Notice to be given by Parliament, after the twenty-fifth of *March*, 1736, upon the Expiration of the said three Years, and repaying to the Company of the whole Capital-Stock of 3,200,000 *l.* and all Arrears of Annuity payable in Respect thereof, then and from thenceforth the Right, Title and Interest of the said Company to the whole,

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whole, sole, and exclusive Trade to the *East-Indies*, &c. shall cease and determine.

But after the Determination of the Company's Right to the sole and exclusive Trade, to and from the *East-Indies*, the Corporation with all or any Part of their Joint-Stock, Goods, Estate, &c. may Trade in common with other the Subjects of his Majesty, trading to and from those Parts.

Any Notice in Writing, signified by the Speaker of the House of Commons, shall be deemed a due and proper Notice by Parliament, to all the Ends and Purposes, for which such Notices are directed by this Act to be given to the Company. Nothing in this Act shall extend to subject the Governor and Company of Merchants of *England* trading to the *Levant Seas*, to any Penalties and Forfeitures hereby enacted in Respect of their Trade into those Seas: And nothing herein, shall restrain or prejudice such Trade or Navigation within any the Limits of the *East-India* Company, as the *South-Sea* Company are any ways intitled unto.

Some *Law Cases* concerning this Company, see *Monopolies* and *Imbargo's*.

Vide Customs, Tonnage and Poundage, &c.
Vol. 1.

C H A P. VII.

Of the South-Sea Company of Trade.

THIS Company of Trade was erected by Statute in a late Reign, to supply the then Exigencies of the Government, and pay the Debts of the Navy and Land Forces, &c. amounting to above nine Millions: In order to the raising and making Provision for the same by the 9 *Ann. cap. 21.* The Duties upon Wines, Vinegar, *East-India* Goods, wrought Silks, Whale Fins, &c. granted by 8 *Ann.* were now granted and continued for ever, for paying an Interest or Annuity, after the Rate of 6 *per Cent.* for all the said Sum to be advanced by Subscribers, until the Principal, being 9,471,321 *l.* should be paid; which Interest amounts to the annual Sum of 568,279 *l.* 10 *s.* as particularly mentioned in the Act.

The Commissioners of the Customs, &c. are to keep apart the Money arising by this Act, and pay the same weekly into the Exchequer, on Pain of forfeiting their Offices, and being liable to pay double the Value of the Money diverted, with full Costs, to any Person who shall be intitled to any Annuity, and who will sue for the same in any Court of Record. And the Treasury shall quarterly in every Year, cause a true Account to be made of all Money brought into the Exchequer upon the Funds hereby appointed; and if upon
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making such Accounts, the Money shall fall short of one Fourth Part of the said Annual Sum of 568,279*l.* 10*s.* Then the Deficiency shall be made good by the Treasurer of the Navy, out of Orders and Tallies, &c. in his Hands, the said Payment to be made to the Cashier of the *South-Sea* Company: And if there shall be any Deficiency in any one Year, it shall be answered and made good out of the next Aids granted by Parliament.

It is enacted, that the Queen may incorporate the Company by Letters Patent, and that they may purchase Lands not exceeding 1000*l.* a Year: And all Tallies and Orders made out, in pursuance of the Act 8 *Ann.* &c. shall be made Part of the Joint-Stock. Persons interested in Navy Bills, &c. shall be admitted into the said Joint-Stock, and become Members of the Company in Proportion to their Sums; and the Bills, Tickets and Debentures, and the Money due thereon shall be cast up, and for every 100*l.* they shall have an Interest for 100*l.* in the Joint-Stock, and an Annuity of 6 *per Cent.* 'till redeemed, and so proportionably for a lesser Sum.

Guardians shall subscribe for Infants, and Executors and Administrators, Trustees and Mortgagees, possess'd of any Bills, may Subscribe and put in such Bills into the Joint-Stock of the Company; and so much of the said Stock shall be Assets in the Hands of Executors, &c. as the Bills would have been, had they not been made Joint-Stock: And as to Trustees, and Mortgagees, the Stock they are intitled to, by the Bills, &c. shall be Subject to the Trusts, and Equity of Redemption, in like
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Manner as the Bills would have been, if they had not been put into the said Joint-Stock. And where Bills jointly belong to several Persons, every one who hath an Interest in them, may subscribe, and put in his Part into the Joint-Stock in his own Name, and shall accordingly be admitted as a Member for so much as his Share shall amount unto.

The Stock and Shares in the Corporation, shall be a Personal Estate, and be exempted from Taxes : And the Crown may appoint under the Great Seal, Rules for the Sharers in the said yearly Funds, and in the Stock of the Company ; and every Part thereof may be transfered or assigned. Members of the said Company, may be Members of Parliament ; and shall not be liable to the Statutes of Bankrupts ; and the Stock shall not be Subject to any foreign Attachment ; And Commissioners named pursuant to this Act, are not liable to any Incapacity, other than for Breach of Trust.

Until a certain Time, the entire annual Sum of 568,279 *l.* 10 *s.* before mentioned, shall be paid to the said Corporation ; and within thirty Days afterwards, the Directors shall cause an exact Account to be made of the Capital Stock, and of the particular Tallies, &c. which shall have been taken into the Joint-Stock ; and also how much of the said Capital-Stock shall be subscribed to the Use of the Publick, &c. that the annual Sum may be more or less, according to the same : And over and above the said yearly Sum, settled to be paid the said Company, there shall be farther paid to them the annual Sum of 8000 *l.*

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out of the said Funds, towards the Charge and Management of the Company. And the yearly Fund shall be issued and paid out of the Exchequer to the Company every Week, as fast as the Duties shall produce Money into the Exchequer for the same: So as by such Payments, the whole of the Annuities, at the End of every Quarter, be not exceeded.

The Corporation and their Successors, shall for ever be vested in the sole Trade into and from all the Kingdoms and Lands on the East-Side of *America* from the River *Oroonoco*, to the Southermost Part of *Terra del Fuego*, and on the West-Side thereof, from the said Southermost Part of *Terra del Fuego*, through the *South-Sea*, to the Northermost Part of *America*; and into and from all the Countries, Islands, and Places within the said Limits, which are reputed to belong to *Spain*, or which shall hereafter be found out or discover'd within the Limits aforesaid, not exceeding three Hundred Leagues from the Continent of *America*, between the Southermost Part of *Terra del Fuego*, and the Northermost Part of *America*, on the said West-Side thereof; except the Kingdom of *Brazil*, and such other Places on the East-Side of *America*, as are now in the Possession of the King of *Portugal*, and the Country of *Surinam*, in the Possession of the States General.

The said Company, and none else, are to Trade within the said Limits; and if any other Persons shall Trade to the *South-Seas*, they shall forfeit the Ship and Goods, and double Value; One fourth Part to the Crown, another fourth Part to the Prosecutor, and the other

other two Fourths to the Use of the Company. And the Company shall be the sole Owners of the Islands, Forts, &c. which they shall discover within the said Limits, to be held of the Crown, under an annual Rent of an Ounce of Gold; and of all Ships taken as Prize by the Ships of the said Company; and the Company may seize, by Force of Arms, all other *British* Ships trading in those Seas.

Persons born on Board any Ship employed in this Trade, or in any Place belonging to the Company shall be deemed natural-born Subjects. But Masters of Ships, employed in carrying on the Trade, not conforming themselves to such Directions as the major Part of the Directors of the Company shall appoint under their Hands, shall pay the said Company double the Value of the Damage sustain'd by the Breach of such Orders; and shall be incapable to serve the Crown in any Place of Trust. Upon the Importation of any Goods by the Company, the Officers of the Customs are required to take Security for the Customs, by a Bond or Bonds under the common Seal of the said Company, &c. which Bonds shall charge their annual Fund or Stock, and may be assigned; and such Assignment shall vest a Property in the Assignee: And it shall be Felony without Benefit of Clergy to Counterfeit the common Seal of the Company, or any of their Bonds, or to alter them, or offer to dispose of, or pay the same, knowing that they are forged or alter'd; or to demand the Money, pretended to be due thereon.

The Agents of the Company, shall not sail beyond the Southermost Parts of *Terra del Fuego*,

Fuego, except through the Streights of *Magellan*, or round *Terra del Fuego*; nor go from thence to any Part of the *East-Indies*; nor return to *Great-Britain*, or any Port or Place, unless through the said Streights, or by *Terra del Fuego*; nor shall they Trade in *East-India* Goods, or in any Places within the Limits granted to the united Company of Merchants of *England* Trading to *East-India*, (such *India* Goods excepted, as shall be actually exported from *Great Britain*; and also such Gold, Silver, wrought Plate, and other Goods and Commodities, which are the Produce, Growth, or Manufactures of the *West-Indies*, or Continent of *America*.) Neither shall they send Ships, or use them, or any Vessel, within the *South-Seas*, from *Terra del Fuego* to the Northernmost Parts of *America*, above three hundred Leagues to the Westward of and distant from the Land of *Chili*, *peru*, *Mexico*, *Callifornia*, or any other the Lands and Shores of Southern or Northern *America*, between *Terra del Fuego* and the Northernmost Part of *America*, on Pain of Forfeiture of the Ships and Goods; one Third to the Crown, the other two Thirds to the *East-India* Company.

A Governor, Deputy-Governor, or Director of the *South-Sea* Company, shall not be elected during the Time he shall be Governor, Deputy-Governor, or a Director of the Bank, or of the ██████ *East-India* Company. The Crown may by Charter grant farther Powers to the Company; and also empower them to make Laws for the better Government of the Trade to the *South-Seas*: And there shall be no Embargo

bargo on any of the Company's Ships, unless particularly nam'd in such Embargo, &c.

By Statute 10 *Ann. c. 19*. The Treasurers of the Navy and Ordnance, and the Pay-Masters of the Guards, Garrisons, and Land Forces, or any other Officers or Persons, intitled to any Part of the Capital Stock of the *South-Sea* Company, for the publick Use and Benefit, (not being sold, apply'd, or dispos'd for publick Uses, in the Act 9 *Ann.* mention'd) may by Warrant in Writing from the Treasury, borrow any Sum of those who shall be willing to lend it upon the Credit of the said publick Stock; and allow Interest, not exceeding 6 *l. per Cent.* to be paid quarterly from the Time of lending, until the Repayment of the Principal, and to assign, mortgage, and transfer the Shares of the said Stock to the Lenders, upon Conditions of Redemption; and for Sale of the Stock so mortgag'd, in Default of repaying the Money borrow'd thereon, or for Non-payment of the Interest thereof, and subject to such other Conditions, as in such Warrants shall be prescribed.

Provided that all the Money which shall be borrow'd on the Credit of the said Stock, shall be apply'd by the Treasurers, Pay-Masters, &c. to such publick Uses whereunto the Stock so mortgaged would have been applicable in Pursuance of that Act, if no such Mortgage, Assignment, or Transfer had been made; and they who borrow the Money shall be accountable for the Application of it; and the *South-Sea* Company shall not be answerable for permitting the Stock to be transferr'd, &c.

The 10 *Ann. c. 30.* reciting the Stat. 9 *Ann.* by which the *South-Sea* Company is incorporated, enacts, That at any Time after the 25th of *December* 1716, upon one Year's Notice, and on Payment by the Parliament of the principal Sum of which the Capital Stock of the said Company shall consist; and of all Arrears of Annuities by and out of the *Surplus* Money of the Funds settled by the said Act, for Payment of the said Annuities to the Company, then all the Impositions and Duties by the said Act granted or appropriated, may be otherwise disposed of by Parliament; and the said yearly Fund, and the Annuities out of the same, shall cease: But that the Corporation shall continue for ever, and shall enjoy all Forts, Factories and Acquisitions that they shall erect and acquire within the Limits of their Charter, and Lands and Tenements purchased by them in *Great Britain*, not exceeding 1000 *l. per Annum*; and the Members thereof (without having any Share in the said yearly Fund so to be redeem'd) shall have the sole Benefit of Trade into the *South-Sea* and elsewhere, as by the said Act is directed; and all other Benefits, and as if no Redemption had been made.

And from and after the Redemption of the said yearly Funds; or after a Moiety thereof, or more, shall be redeem'd, &c. the Governor and Company, by their By-Laws or Orders made at their General Court, may direct how much, and what Part and Share in the then remaining Capital Stock or yearly Fund, and the Money and Stock paid in for Trade, or gain'd thereby, shall qualify the Members

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of the said Company to give a Vote in any General Court, for the electing a Governor, and Directors of the Company; and for their continuing and being elected in the said Offices.

By 12 *Ann. c. 1.* The Bank of *England* and others, may advance and lend any Sums of Money to the Treasurers of the Navy and Ordnance, and the Pay-Masters of the Guards, &c. upon the Credit of the publick Stock of the *South-Sea* Company, at such Interest, and upon such Assignments, Mortgages or Transferences, and subject to such Conditions of Redemption, &c. as are prescrib'd in the two Acts last above mention'd.

The Statute 1 *Geo. 1. cap. 21.* enacted, That the Sum of 822,032 *l. 4 s. 8 d.* shall be added to the Capital Stock of the *South-Sea* Company; which Capital or Joint-Stock, with the said Addition, doth amount and shall be esteem'd to amount to 10,000,000 *l.* Sterling, And the Treasurer of the Navy is to write the same in the said Company's Books, as Part of their Capital Stock, and the said additional Stock so written in shall be transferable, and have the same Dividends, Benefits and Privileges, and be subject to the like Rules and Powers, as the rest of the Capital Stock is to have and be subject to: For which the Company shall have an encreased Fund of 600,000 *l.* a Year, and the Allowance of 8000 *l.* per *Ann.* for their Charges of Management, &c.

But at any Time, on one Year's Notice, after 25 *December*, 1716, on Repayment by Parliament of the said Sum of 10,000,000 *l.* and of all Arrears of the said yearly Sums of 600,000 *l.*

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and 8000 *l.* then all the Duties by the 9 *Ann.* or this present Act appropriated, shall and may be disposed of by the Parliament, and the said yearly Fund of 600,000 *l.* and all Annuities out of the same, &c. shall cease and determine: Though the said Corporation shall continue for ever, and have perpetual Succession, and shall enjoy all such Forts, Factories, &c. and Benefit of Trade, and other Benefits whatsoever, to which they would have been entitled by the aforesaid Act 10 *Ann. cap. 30.* in Case the Redemption of their yearly Fund were made pursuant to that Act.

The 3 *Geo. 1. cap. 9.* recites, That whereas the Capital or Joint-Stock of the Governor and Company of Merchants trading to the *South-Seas*, &c. being adjusted by several Acts of Parliament, amounts to Ten Millions, and in Respect thereof a yearly Fund is payable to the said Company after the Rate of 6 *l. per Cent. per Annum*, &c. And that the said Company are contented, in Regard the Rate of Interest is very much lessen'd, to accept an Annuity after the Rate of 5 *l. per Cent.* Therefore it is enacted, That the Company shall be fully satisfied and paid, all such Moneys as are due on the yealy Fund of 600,000 *l.* and the yearly Sum of 8000 *l.* aforesaid, out of the several Revenues charged therewith, or by such other Ways and Means, as by any former Acts are prescrib'd in that Behalf, and then the said Fund shall cease and determine.

And the said Company shall have the yearly Fund or Annuity of 500,000 *l.* and the said 8000 *l. per Ann.* which are hereby charged on the Duties, &c. that by the Act 9 *Ann. cap. 21.*
or

or any other Statute now in Force were chargeable with the said former yearly Payments, and shall be paid to the Company quarterly; &c. And the said Company shall advance into the Exchequer a further Sum not exceeding 2,000,000 *l.* at such Times, and in such Proportions, as three or more of the Commissioners of the Treasury shall by Writing under their Hands appoint: And in Case the Company make Default in Payment of the Moneys so to be advanc'd, the Money whereof Failure shall be made, may be recovered in his Majesty's Name, by Action of Debt, &c. in any of the Courts at *Westminster*; and there shall be also recover'd to the Use of his Majesty, against the Governor, &c. of the said Company, Damages at the Rate of 10 *l.* *per Cent. per Annum* for the Money so unpaid, besides full Costs; and the Company and their Capital Stock shall be liable thereto.

The Company, for every Sum they shall advance in Part of the said Two Millions, shall have an Annuity of 5 *l.* *per Cent.* for ever, but subject to the Proviso of Redemption herein after contained: And it shall be lawful for the Governor and Company, from Time to Time as they see Cause, to call in from their respective Members, proportionable to their Interest in the Capital Stock of the said Company, or by opening Books of Subscription, or granting redeemable Annuities, &c. as they think proper, to raise any Sum of Money as in a General Court shall be judged necessary, &c. And if any Member shall refuse to pay his Share of the Money so called for, at the Time appointed on a pub-

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lick Notice; the said Company may not only stop the Dividend, &c. payable to such Member, and apply it towards Payment of his Share, 'till the same be satisfied, but may stop Assignments of every such Defaulter, and charge him with 10*l.* *per Cent.* Interest, for the Money so by him omitted to be paid, &c. And if the Principal and Interest shall be unpaid by the Space of three Months, then the Company shall have Power to sell so much of the Stock of such Defaulter as will satisfy the same, rendring the Overplus to the Proprietor. And the Company, in a General Court, when they shall judge their Affairs will admit thereof, may cause any Sums so called in, to be divided amongst their Members, in Proportion to their respective Interests in the said Capital Stock.

Also the said Company may borrow Money upon any Contracts, Bills, &c. under their Common Seal, or on the Credit of their Capital Stock, for such Interest, and for any Time not less than six Months, as they shall think fit; and give Security under the common Seal of the Company, or by assigning their said Capital Stock, or any Part thereof, or otherwise, as shall be to the Satisfaction of the Lenders; which Bills, &c. shall not be chargeable with any Stamp-Duty. And so much Money as shall be called for by the said Company from their Members, for or in Part of the said 2,000,000*l.* shall, if thought fit, be an additional Stock, and be written into the Books of the said Company, and each Member shall have Credit in the said Books for his Proportion thereof; and the Members
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who shall have a Share in the additional Stock, may assign and transfer the same in the Company's Books, in the like Method as is prescribed by the Acts of Parliament and Charter now in Force, for Assignments or Transfers of original Stock; and may devise the same by Will, in such Manner as any Share in the said original Stock is deviseable.

On Repayment of the said Two Millions, or so much thereof as shall be called for and advanced as aforesaid, without any Abatement, and of the Arrears of the Annuities of 5*l.* *per Cent.* payable for the same, the said Annuities shall cease. And upon one Year's Notice to be given by Authority of Parliament, at the 24th of *June* 1723, or any of the Quarterly Feast Days after, and on Repayment by Parliament to the said Company, of the said Sum of Ten Millions, according to such Notice, without any Deduction or Abatement; and on Payment of all Arrears of the aforesaid yearly Sums of 500,000*l.* and 8000*l.* the said yearly Sums shall from thenceforth determine. And if at any Time after the 24th of *June*, 1720, Payment be made to the Company, on Notice by Parliament, of any Sum, not less than One Million at a Time, in Part of the said Ten Millions, and of all the Arrears then due to them of the said annual Sums of 500,000*l.* and 8000*l.* or so much of their Arrearages as shall bear a Proportion to the principal Moneys remaining unsatisfied, then after every such Payment so made, so much of the said yearly Sum of 500,000*l.* as bears Proportion

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to the Money paid in Part of the Principal, shall determine and be abated.

After Redemption of all the said yearly Sums of 500,000 *l.* 8000 *l.* and the Annuities at 5 *l. per Cent.* by Payments according to the several *Proviso's* in this Act, the Duties, &c. aforesaid, and all proportional Parts of them, shall be understood to be redeem'd by Parliament, and shall not be apply'd to any other Purpose, without Authority of Parliament: Nevertheless the Corporation shall continue, by the Name aforesaid, and have perpetual Succession, &c. and have the Benefit of Trade, &c. as by any former Acts is ordained.

By the 5 *Geo. 1. cap. 19.* The *South-Sea Company*, are allow'd to take in Subscriptions of Lottery Annuities, amounting to the Sums of 32,635 *l. per Annum*, in Respect of fortunate Tickets, and 102,373 *l. per Annum*, on Account of Tickets that proved unfortunate, in a Lottery enacted by 8 *Ann. cap. 4.* for raising 1,500,000 *l.* So that the Subscribers shall have and enjoy of or in the encreased Capital Stock of the Company for the Term of twenty-three Years, and three Quarters so subscribed, of and in every such Annuity, a Share to be computed after the Rate of Eleven Years and a Half Purchase, amounting to 11 *l.* 10 *s.* for every Twenty Shillings *per Annum*, and so proportionable for greater or lesser Annuities.

And the said Company shall advance and pay into the Exchequer, towards discharging the National Debts and Incumbrances, the full Sum of 778,750 *l.* at three several Payments,

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ments, &c. The Value of the said Lottery Annuities, or so many of them as shall be actually subscribed, computed as aforesaid, and also the said Sum to be now advanced by the Company, shall be deemed an additional Stock of the said Company, and united to their present Capital Stock, of Ten Millions; and the Commissioners of the Treasury, &c. shall cause the Sum total of the said additional Stock to be adjusted, and declare and determine the same, &c.

The Company shall have and enjoy for the said additional Stock, an Annuity or Fund after the Rate of *5l. per Cent. per Annum*, which is hereby enacted to be united with their present Annuity or Fund of *500,000 l.* a Year; and the said yearly Funds so united, shall be the encreased yearly Fund of the said Company. And so much of the said additional Fund as shall be payable to the said Company in Respect of the Lottery Annuities, and the Arrearages thereof, which shall be subscribed as aforesaid, shall be accounted due, and be paid to them or their Cashier, for their Use, &c. And the Company shall have towards the Charges of Management of their Affairs, an additional yearly Sum of *2000 l.* allowed to the said Company for such Charges.

And the Share and Interest of every Member of the said Corporation, in the present Capital Stock, and in the Encrease of such Capital, and in the said Annuities at *5l. per Cent.* And in the *8000 l.* and *2000 l. per Ann.* shall be adjudged a Personal Estate, and go to the Executors or Administrators of Persons dying possess'd thereof, and not to their Heirs :

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And

And the Members who shall have Shares in the present or encreas'd Capital Stock of the said Company, as well with Respect to the said Lottery Annuities, to be subscribed as beforementioned, as of the said Sum of 778,750*l.* to be paid by the said Corporation into the Exchequer, may assign and transfer such Shares, or any Part thereof, in the Books of the Company, &c. And the same shall be exempted from all Taxes, &c. by Act of Parliament, or otherwise.

The said Company shall continue one Body Corporate and Politick, by the Name of the Governor, &c. and have and enjoy the said yearly Fund of 500,000*l.* and the said additional yearly Fund after the Rate of 5*l. per Cent.* to be added thereto, by Way of Increase, as aforesaid; and the said yearly Sums of 8000*l.* and 2000*l.* pursuant to this Act, 'till the said Funds and yearly Sums be redeem'd according to this Statute; and shall hold and enjoy all their Forts, Factories, Lands, &c. and sole Benefit of Trade to the *South-Seas*, and elsewhere, with a perpetual Succession, and all Abilities, Capacities, Powers, Privileges, Profits, &c. (all which are hereby ratified, and confirmed to them and their Successors) freed and discharg'd of all former Proviso's, &c. for redeeming or making void the same; but subject to the respective Powers of Redemption in this Act contain'd.

And after the Redemption of all the said yearly Funds and Sums, by Payments made according to this Act, &c. the Corporation shall continue for ever, and enjoy all Forts, &c. and all Abilities, Advantages, &c. except
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the said respective Annuities to them payable, as aforesaid.

The Statute 6 *Geo. 1. cap. 4.* in the Preamble reciting the publick Debts of the Nation, being above Sixteen Millions, and that the Commons were desirous to have the said publick Debts and Incumbrances lessen'd as fast as might be, with Regard to Justice and the publick Faith; and for settling certain Duties, to answer the *South-Sea Company's* Annuities, &c. So that from *Midsummer* 1727, their Annuity for their whole Capital, and increas'd Capital Stock, may be reduc'd to 4*l. per Cent. per Annum*, grants the Duties of Excise upon Beer, Ale, &c. the new Duty on Pepper, Raisins and Spices, and upon Soap, Paper and Starch, &c. to have Continuance for ever, to secure the *South-Sea Company* such Annuities as shall become payable to them in Pursuance of this Act, 'till Redemption by Parliament.

It is declared, that the *South-Sea Company* may redeem all, or any the redeemable Debts in the Act mentioned, amounting in the whole to 16,546,482 *l.* or thereabouts, and the Securities for the same, by paying them off at the Rate of 100 *l.* for every 100 *l.* and so proportionably, or by such Stock as shall be accepted in Lieu thereof, in Pursuance of Subscriptions, and may use all lawful Means for Redemption thereof. And in all Cases where, by any Acts now in Force, Notice for the Redemption of the said Debts and Incumbrances, should be given in Behalf of the Publick by Authority of Parliament, or by the Speaker of the House of Commons, pursuant to any Vote or Resolution of that House; the like
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Notice may be given by the Company, or such Persons as they, or their Court of Directors, shall appoint, for redeeming of the same, or so many of them as are redeemable, at a Time as they in Regard to their own Abilities, and other Circumstances, shall think fit.

And after the Expiration of the Time mentioned in such Notice, for paying off the same Debts, or any Part of them, such Debts, &c. as shall be mention'd in the said Notice, shall upon Payment of the respective Sums, payable to the Proprietors for such Redemption, or Tender thereof at the publick Office of the Company, be adjudged to be redeemed; and the Interest or Annuity payable to the said Proprietors, shall from thenceforth cease and determine; and instead thereof, a like Annuity shall be paid to the *South-Sea Company*, and a proportional Addition be made to their Capital Stock. And as to such of the said Debts and Incumbrances, for the Redemption whereof no Notice is by Law requir'd, the Company, or Court of Directors, may by Writing affixed upon the *Royal Exchange*, or by Publication in the *London Gazette*, appoint a Time for Payment of the said Debts, &c. in the same Manner as for redeeming the other Debts, as above is directed.

The Company may take in by Way of Purchase or Subscription, all or any Annuities, &c. and if the Proprietors of the said redeemable Debts and Incumbrances, herein computed at 16,546,482 *l.* shall be willing to accept (in Lieu of the said Rate of 100 *l. per Cent.* in Money) of Shares in the Company's Capital Stock, to be

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be increased according to this Act, at such Price as shall be mutually agreed upon at the Time of Subscribing, such Proprietors shall be intitled thereto accordingly; and in Respect of such Shares, shall be deemed Members of the Company, and have the like Advantages, Dividends, &c. as the other Members, &c. and every Proprietor during such Time as the Books shall lie open, may Subscribe his Annuities or Debts in the proper Books belonging to the Company, at the Prices, and upon such Conditions, as are before prescribed; and all Persons who shall be paid or satisfied their Debts or Annuities, in Money, or by Acceptance of Shares in the said Capital Stock, shall at the same Time deliver up to such Persons as the Treasury shall appoint, all the Orders and Tickets, whereby they were entitled to the said Debts.

And the Managers and Directors, or any three or more of them, shall from Time to Time, make up, adjust and sign distinct Accounts, of all the particular Annuities and Debts that shall have been taken in or paid off, within the Time of every such Account: The said Managers and Directors shall also transmit Duplicates of the said several Accounts, attested by three or more of them, to the Treasury, and to the Company; and Duplicates of so much thereof as concerned any of the said Annuities or Debts payable at the Exchequer, to the Auditor of the Receipt, &c. and the Treasurer shall, as they receive the said Accounts or Duplicates from the Managers, by Instruments in Writing under Hand and Seal, declare, settle and determine,
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not only the Addition to be made to the Company's Capital Stock, according to the Values specified in such Accounts, but also the Additions to their Yearly Fund, in Respect of the said Additional Stock, and the Times from whence the same shall commence; and thereupon every Member, in Proportion to his Share, shall have Credit in the Company's Books.

An yearly Sum amounting to 9,397 *l.* 9 *s.* 6*d.* and farther Sums for Charges of Management, shall be paid to the Company, at such Times, and in such Manner, as their present Annuity, and the said Additions to be made thereto, are hereby made payable, 'till the Yearly Funds shall be redeem'd; and shall be charged upon the Duties and Incomes, by this Act charged with the Company's present Annuity, &c. which Duties are to be levied and brought into the Exchequer, according to the Directions of former Acts; and the Moneys to be kept apart, and applied to the Payment of such Sums as shall at any Time be due to the Company, and to no other Use: And Orders for making Payments to the Company shall be made out and signed by the Treasury, which after signing may not be revoked or made void; and Weekly, or otherwise, as the Money hereby appropriated shall be brought into the Exchequer, it shall be issued on such Orders, &c.

But such of the said Annuities and Debts, as shall not be taken in by Purchase or Subscription, or paid off in Pursuance of this Act, and the Interest Moneys payable for the same, shall continue to be paid to the Proprietors thereof,

thereof, their Executors, &c. at the same Offices, and out of the said Duties, and at the like Times; and shall be assignable, transferable, and disposable in the same Manner, &c. as if this Statute had never been made: Neither shall this Act delay or prejudice any Persons in the receiving, assigning, transferring or disposing of the said Annuities or Debts, or the Interest of such Debts not taken in or paid off, in any Manner of wise.

The *South-Sea* Company, in Consideration of the Liberty hereby given them, of increasing their Capital-Stock, and their Yearly Fund in Respect thereof, by taking in or paying off all the Redeemable Debts and Incumbrances aforesaid, shall pay into the Exchequer, towards discharging the Principal and Interest of such National Debts as were incurred before the twenty-fifth of *December* 1716, the Sum of 4,156,306 *l.* 4 *s.* 11 *d.* without any Deduction, by four quarterly Payments: And in case the said Corporation shall make Failure in Payment of the said Money, or any Part thereof, at the limited Times; then the Money whereof such Failure in Payment shall be made, may be recovered by Action of Debt, &c. in his Majesty's Name, with Damages after the Rate of 5 *per Cent. per Annum* for the same.

And for the enabling the Company to raise the said Sum, and other Sums for the purchasing or paying off Annuities, and for exchanging for ready Money new Exchequer Bills, to be made forth as herein after is mentioned, and for defraying the Interest thereof, and carrying on their Trade, &c. the Company
may

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may call in from their Members, or by opening Books of Subscription, or by granting Annuities, or any other Method as they shall think proper, raise any Sums of Money, as in a General Court of the said Company shall be judged necessary, and ordered to be called in: And on Neglect or Refusal of any Member to pay his Share, it shall be lawful for the Company to Stop his Dividend in the Funds, &c. and to charge him with Interest at 5 *per Cent. per Annum*, from the Time appointed to pay it, 'till Payment thereof; for which the Stock of such Defaulter shall be liable, and in three Months Time it may be sold, as by former Acts.

The said Company are empowered to borrow Money on Contracts, Bills, Bonds, or Obligations under their Common Seal, or on the Credit of the Capital Stock, &c. All Bonds and Obligations under the Company's Common Seal, shall bind as well the annual Fund, and additional Fund payable to the Company, by Virtue of this Act, as the present and additional Stocks, and other Effects of the Company for the Time being: And all such Bonds and Obligations shall be assignable, and the Moneys thereon recoverable as effectually, as any their Bonds taken upon any former Act might be assign'd, or the Money due thereupon recovered. Also all such Contracts, Bills, Bonds, &c. under the Common Seal of the Corporation, shall not be charged with any of the Duties on Stamp Vellom, &c. Though transfers of the Stock, are liable to the said Duties.

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If the Company think proper, the Money called in from the Members shall be deemed an additional Stock, and shall be written into the Company's Books; and each Member shall have Credit in the Books for his Proportion of the same, and may transfer the same, or devise it by Will: Nevertheless the Company, in Respect of such Stock so added, shall not be intitled to any Increase of their Annuity, to be paid out of the publick Duties or Incomes before mentioned.

The Company shall continue for ever, and be one Body Coporate, by the Name of the Governor and Company of Merchants of *Great-Britain*, trading to the *South-Seas*, and other Parts of *America*, and for encouraging the Fishery; and shall enjoy the present Annuity of 587,342*l.* 4*s.* 5*d.* and the yearly Funds to be added thereto by Way of Increase; and the aforesaid yearly Sum of 9,397*l.* 9*s.* 6*d.* and the yearly Sums to be added to it for Management, pursuant to this Act, till the Redemption thereof by Parliament, &c. But after the Feast of St. *John Baptist* 1727, upon Repayment by the Parliament, of the whole Sum whereof the Company's Capital Stock, with all Additions, which (for taking in the said Annuities Debts, and Incumbrances) are to be made thereto by Way of Increase, shall then consist, without any Deduction whatsoever; and on Payment of all Arrears of the Funds, &c. then the yearly Fund, and the Funds to be added, as aforesaid, and the said yearly Sums to be allowed for Charges of Management, shall cease and determine.

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After *Midsummer*, in the Year 1727, on Repayment by Parliament to the Company of any Sum (not less than one Million at a Time) in Part of the principal Moneys, which the said Capital, with all the Additions to be made to the same, shall then jointly amount to, and upon Payment of all the Arrears due to them upon their increased yearly Fund, or so much of the said Arrears as shall bear a Proportion to the principal Sums remaining unsatisfy'd; (being computed by the Day, 'till the Time of every such Payment of Part of the Principal) and on paying all Arrears then due upon their yearly Sums for Management; then so much of their said Annuity so increased as aforesaid, as shall be in Proportion to the Money so paid, shall cease and be abated: And after such Repayment, so much of the several Duties, Revenues and Incomes, as were by this Act applicable thereunto, shall be understood to be redeem'd, &c. Yet the Corporation shall remain for ever, and shall enjoy the sole and exclusive Benefit of Trade, and all Forts, Factories, Acquisitions, Lands, &c. as if such Redemption were not made.

By this Statute, if the Sub-Governor, Deputy-Governor, Directors, Managers, Assistants, or other Members of the Company, shall purchase any Lands or Revenues belonging to the Crown, upon Account of the Corporation, or lend Money by Way of Loan or Anticipation, on any Branch of the Revenue, now or hereafter to be granted to the Crown, other than such Parts only on which a Credit of Loan is granted by Parliament, such Sub-Governor, &c. being lawfully convicted of any
such

such Offence, shall forfeit treble the Value of the Money so lent; one Fifth whereof to the Informer, and the Residue to be disposed of towards publick Uses, as shall be directed by Parliament; the Informer's Part to be recovered in the Courts at *Westminster*, by Action of Debt, &c.

There is a Proviso, that this Act shall not hinder the Payment of the yearly Sum of 700,000 *l.* during his Majesty's Life, for Support of his Household, and the Honour and Dignity of his Crown; or any Part of the Annuities granted by his Majesty out of the same, to the Prince of *Wales*, or his Trustees; or of the 4000 *l.* payable yearly out of the Aggregate Fund, to the Sheriffs of *England* and *Wales*, for defraying the Charges of taking forth their Letters Patents, passing their Accounts, and obtaining their *Quietus's*.

I have been the more particular in my Notice of this Statute, because the fatal *South-Sea* Scheme in the Year 1720, was executed thereon: And by 7 *Geo. 1. cap. 1.* which recites, that the then Sub-Governor, the Deputy-Governor, and Directors of the *South-Sea* Company, &c. under Colour of the Act 6 *Geo. 1. cap. 4.* had contrived and carried on many notorious, fraudulent and indirect Practices, contrary to the Intention of the said Act; to the great Detriment of the Publick, and in Breach of their Trust, and in manifest Wrong of great Numbers of his Majesty's Subjects; Therefore, that their Persons and Estates may be secured, so as to be liable to Justice in Parliament, it is enacted, that the said Sub-Governor and Directors, &c. or any of them, shall not go

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out of this Kingdom for the Space of one Year, for which Security shall be given by Recognizances in a very large Penalty.

And every of them the said Sub-Governor and Directors, &c. shall deliver in upon Oath before one of the Barons of the Exchequer, true Particulars and Inventories, of all and singular their Real and Personal Estates, of which they were possess'd or intitled to in their own Right, and that any other Persons were seized in Trust for them, or to their Use, on the first of *June* 1720, and they are declared to be disabled from, and incapable of conveying, aliening or incumbring any Lands, &c. and from assigning over any of their Personal Estate, during one whole Year; and they shall not convey any of their Goods or Effects out of this Kingdom, on Pain of being guilty of Felony, &c.

It is also Felony, if any of the Directors, &c. refuse to deliver in such Inventories, or wilfully conceal their Estates; and Persons who shall have accepted of any Trust, concealing any Estate, Real or Personal, of any of them, shall forfeit treble the Value: And every Person voluntarily discovering any such Estate so concealed, shall be allowed after the Rate of 20*l.* *per Cent.* according to the Value of the Estate and Effects, being in any Part beyond the Seas; and after the Rate of 10*l.* *per Cent.* if within this Kingdom.

All the Estates of the said Sub-Governor and Directors, &c. which shall be forfeited and recovered by Virtue of this Act, shall be paid into the Exchequer, and applied for the Benefit of the *South-Sea* Company.

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By the 7 *Geo. 1. cap. 2. § 28.* the Sub-Governor, Deputy-Governor, and Directors, are disabled to hold or enjoy any Office, or Place of Trust, &c. and all their Estates, Real and Personal shall be vested in Trustees, to the Intent the same may be sold, or otherwise applied to the Uses in this Act; except the necessary wearing Apparel of them, their Wives and Children, and such Part of the Premises as shall be allowed for their Subsistence; under the Conditions herein after Specified, &c.

All the clear Moneys to arise out of the respective Estates and Interests, and other Effects hereby vested in the Trustees, or by any Sales or Dispositions thereof, or any Rents, Issues, or Profits of the same, (other than so much as by any Clause in this Statute is to be issued on hearing or determining of Claims, or for Salaries or incident Charges, Rewards to Discoverers, &c.) shall be appropriated to the Use of the *South-Sea Company*, for increasing their Capital Stock, and that of all the Members thereof, in Proportion to their respective Shares therein.

And every of them the said Sub-Governor, Directors, &c. shall out of the particular Personal Estate and Effects, which belonged to him respectively, have such Provision, Settlement or Allowance for the necessary Subsistence of him and his Family, as is set down in a Schedule to this Act annexed; from 10,000*l.* to 20, and 30,000*l.* and down to 5000*l.* and 2000*l.* &c. proportionable to their Estates and Effects; provided they give in true Accounts, &c. and do voluntarily release or

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convey in due Form of Law to the Trustees, all their Right, Title, Interest, Claim or Demand which they have or pretend to have in the said Estates.

Also by a Subsequent Act, Jointures and Rights or Titles of Dower, of the Wives of the *South-Sea* Directors, whose Estates were to be sold by 7 *Geo. 1. cap. 1.* are saved; and Trustees may compound for any Jointure, Right of Dower, &c. for such Sums of Money, and upon such other Conditions, as shall be thought fit: And if any Difference happen therein, the Judges to determine it on Complaint, &c.

The Stat. 7 *Geo. 1. cap. 5.* Enacted, That to retrieve Publick Credit, the *South-Sea* Company shall be enabled, by one or more Indentures under their Common Seal, to assign and transfer to the Governor and Company of the *Bank of England*, such Share of their Capital Stock, as shall be agreed upon between the said Companies, together with so much of their Annuities as shall bear Proportion thereto; so as such Shares do not in the whole exceed 9,000,000 *l.* and the Proportional Annuities which are to attend the same, exceed not 450,000 *l. per Annum*, to be paid out of such Duties as by 6 *Geo. 1. cap. 4.* are charged with the said Annuities of the *South-Sea* Company, &c. and there is the like Clause for transferring and ingrafting Nine Millions of the *South-Sea* Company's Capital-Stock, into that of the *East-India* Company.

After such Transfers and Ingraftments from the *South-Sea* Company, the *Bank* and the *East-India* Company, shall enjoy the said
Shares

Shares in Stock, and the respective Annuities so transferrable to them, but subject to Reducement, 'till Redemption thereof, pursuant to the Provifoes herein after contained in that Behalf; and the said Shares and Annuities shall be free and clear of and from the Payment of any Part of the 4,156,306 l. 4. s. 11 d. &c. to be paid by the *South-Sea* Company into the Exchequer for the Use of the Publick; and from all Debts incurred by the said *South-Sea* Company to the King or any others, and all Bonds, Covenants, &c.

The *South-Sea* Company shall hold and enjoy their Sum of 9,397 l. 9 s. 6 d. *per Annum*, and such further Sums as by the 6 Geo. 1. shall be computed and allowed for Charges of Management, 'till some Assignment is made of Part of their Capital Stock and yearly Funds in Pursuance of this Act; and after the making of any such Assignment, they shall have and enjoy the said Sums, so long as the same shall be payable, except such Parts thereof, as pursuant to any Agreements to be specified in the aforesaid Indentures, shall be assigned to the Bank of *England* and *East-India* Company; and after such Assignments, those two Company's shall have the Parts of the same, as shall be assigned to them, so long as they are payable; and the *South-Sea* Company shall enjoy the Residue.

And when the *South-Sea* Company make any Assignment of Part of their Capital to the Bank, or *East-India* Company, they shall deliver to the Accountants General of those Companies, Schedules under their Common Seal, of all the Proprietors to whom the Stock

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so assigned shall then belong, and the several Proportions of such Proprietors therein; and shall cause them to be debited in the Books of the *South-Sea* Company; and all such Proportions shall then be added to the Capital of the Bank and the *East-India* Company, and every Member of those Corporations shall have Credit in the Books thereof, for his Share in the increased Capital, and in all Dividends and Profits to attend the same, after their being so taken in.

The respective Members, who have Shares in the *South-Sea* Capital Stock, which shall not be assigned to either of the other Corporations, or devise the same by Will, as fully, and in such Method, as they might have done, if this Act had not been made: And after making any Assignment or Transfer of Stock, pursuant to this Statute, to the Bank or *East-India* Company, the respective Members may assign their Shares as formerly; and all Privileges, Advantages, Capacities and Powers, &c. founded on any Acts or Charters now in Force concerning the said Companies, shall be extended to their increased Stock and Annuities.

And after the Ingraftments from the *South-Sea* Company to the Bank and *East-India* Company as aforesaid, Persons having any Share, or having a joint Property, not exceeding or amounting to more than 100*l.* in the whole, in the Capital-Stock of the *South-Sea* Company, or of the Bank or *East-India* Company, may transfer the same in proper Books of the respective Company's, without being chargeable with Stamp Duties, or any other Fees or Charges in respect of such Transfers,
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but shall be exempted therefrom, and from all Penalties and Forfeitures relating thereto.

The *South-Sea* Company are to pay into the Exchequer, the said Sum of 4,156,306 *l.* 4 *s.* 11 *d.* and other Moneys, at four following further Times of Payment, hereby appointed; and their Stock and Funds shall be liable thereunto: And the said Company at their own Costs and Charges, shall repay into the Exchequer, the Sum of One Million, due for the Exchequer Bills amounting to the said Sum, made forth by Virtue of the Act 6 *Geo. 1. cap. 10.* with the Interest due for the same, &c.

At any Time after *Midsummer* 1727, on Repayment by Parliament to the *South-Sea* Company, of the Sum of the Capital Stock, which shall then belong to that Corporation, and of all Arrears of their Annuities, payable in Respect thereof, and the Sums for Charges of Management; then their Annuities, &c. shall cease and determine: And on repaying by Parliament to the Bank of *England*, and *East-India* Company, of the whole Capital Sums, that shall be assign'd or transferred, or then belong to them, from the *South-Sea* Company; and on paying the Arrears of the Annuities due to them on that Account, &c. then their said Annuities shall from thenceforth cease.

And after the Time aforesaid, upon Repayment by Parliament to the *South-Sea* Company, of any Sum not less than 500,000 *l.* at a Time, and to the Bank and *East-India* Company of any Sums not less than 250,000 *l.* at a Time, in Part of the principal Moneys of their respective Capital Stocks; and upon paying
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ing all Arrears of Annuities, &c. then, so much of their respective Annuities as shall bear Proportion to the Moneys so paid in Part of the Principal, shall be abated.

The Bank shall continue a Corporation, with all the Powers, &c. thereto belonging, 'till their Shares of Capital Stock which shall be assign'd to them by the *South-Sea Company*, and all their Annuities to attend the same, and their Proportion for Charges of Management, shall be redeem'd; notwithstanding the Redemption of their other Funds, by which they are established.

By 7 *Geo. 1. Sess. 2. cap. 1.* several Provisions are made to *restore the publick Credit*, &c. It is declared, that the Sum of 4,156,306. 4 s. 11 d. which in Pursuance of 6 *Geo. 1. cap. 4.* the *South-Sea Company* was to pay into the Exchequer, and the several further Sums therein mentioned; and all Actions, Suits, Demands, &c. for recovering the same, shall by Virtue of this Act, be remitted, released and discharged. And the full Sum of Two Millions, Part of the Capital Stock belonging to the said Company, shall be reduced, sunk, and annihilated; and a proportionable Part of their Annuities payable on Account of the said Two Millions, shall be no longer paid; but shall from henceforth cease and determine for the Benefit of the Publick.

For the further Relief of the Proprietors of the redeemable Annuities, upon their several Subscriptions, the Company shall make an Addition of 33 l. 6 s. 8 d. in Stock upon every 100 l. already allowed to the said Proprietors of the said Annuities, and of the second, third, and

and fourth Money Subscriptions: Which Addition made to the Proprietors, together with the Stock allow'd them at the Rate of Four hundred *per Cent.* with the Dividend at *Midsummer* 1720, shall be in full Discharge of their redeemable Annuities, which were subscribed, and for which the Securities were delivered up, &c. notwithstanding any Defect or Error in taking the said Subscriptions; and no more Money shall be demanded by the Company on any of the four Money-Subscriptions, &c.

Such Persons, (Brokers, &c. excepted) as since 25 *March* 1720, have borrowed Money of the *South-Sea* Company, upon Shares in Stock actually transferred and pledged to the Company, who shall pay to the Cashier of the said Company, at their publick Office, so much Money as at a Rate of 10 *l. per Cent.* to be computed upon the Sums so borrow'd, shall amount to, at two several Payments, shall be discharged from all further Demands of the Company; and all the Stock so pledged, for which such Payment shall be made, together with the Dividends and Profits belonging to the same, shall be vested in the Company for their Use.

Every Contract for the Sale or Purchase of Stock or Subscriptions, not performed or compounded by a certain Time, or an Abstract or Memorial thereof entered in Books kept for that Purpose, &c. shall be null and void: No Special Bail shall be required in any Action brought on any Contract made since the 1st of *December* 1719, and before that Day in the Year 1720, for the Sale or Purchase of any Subscrip-

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Subscription or Stock of the *South-Sea Company*, or any other Company; and no Execution shall be awarded on any Judgment, &c. obtained in any Action or Suit commenced on such Contract, 'till the End of the Session of Parliament after 29 September 1721.

The Act 8 *Geo. I. cap. 21.* ordains, That it shall be lawful for the *South-Sea Company*, to sell and dispose of to any Persons, or Bodies Politick or Corporate, any Part of their Stock, or of their Fund payable at the Exchequer, not exceeding 200,000*l.* a Year, by Way of Lottery, Subscription, or otherwise, at such Times and in such Manner, as by their General Court shall be thought expedient: And if the Company shall think fit to raise all or any Part of the Money, by selling any Part of their Annuities, the Contractors for purchasing the same, shall be deemed capable in Law to hold and enjoy the Parts so purchased, from such Time as shall be agreed upon between the Purchasers and the said Company.

In Case the Purchase of the said Stock or Annuities, be made by any Body Politick or Corporate, they may unite the Capital Stock so created, to their own Capital; and every Member of such Body Politick or Corporate, shall have Credit in the Books thereof for his Share in the Stock so encreased, and all the Profits to attend it: And after such Purchase made, the Capital Stock of the *South-Sea Company* shall be lessened so much as the Values of the Parts so sold amount to; and their Annuities proportionably be lessen'd.

And

And any Bodies Politick or Corporate, who shall have purchased any Part of the said Annuities, for the better enabling themselves to pay for the same, are authorized to raise Money, by opening of Books for taking in Subscriptions from any Persons, for Sale of Part or all of their Capital Stock so hereby created; or by making Calls of Money from their Members; and by stopping and disposing the Shares and Dividends of such Members, as shall make Default in answering such Calls, and applying the Money so stopped for the Purposes aforesaid; or by borrowing Money on Bonds, Bills, &c. under their common Seal, as to them shall seem most convenient: Which Moneys raised by any of the said Ways or Means, they are enjoined to apply for paying the Purchase Money to the *South-Sea Company*.

The Purchasers of any Parts of the Annuities of the *South-Sea Company*, shall hold the same, 'till the Parts so purchased shall be redeemed pursuant to this Act; and any Body Politick or Corporate, purchasing such Parts of the said Annuities, shall continue a Corporation, 'till Redemption of the Parts purchased by them.

By the 8 *Geo. 1. cap. 22.* If any Person shall forge or counterfeit, or procure to be forged or counterfeited, or wilfully act or assist in the forging, &c. any Letter of Attorney, or other Authority, to transfer Stock of the *South-Sea Company*, or any other Body Politick or Corporate, established by Act of Parliament; or to receive any Annuity or Dividend attending the same, &c. or shall forge or counterfeit

feit the Name of any Proprietor of such Stock, or of any Person entitled to any such Annuity or Dividends, &c. or shall knowingly and fraudulently demand, or endeavour to have any Share in Stock, to be transferred, or Dividend to be receiv'd, by Virtue of any such forged or counterfeited Letter of Attorney; or shall falsely and deceitfully personate any real Proprietors of the said Stock, Annuities or Dividends, and thereby receive, or endeavour to receive the Money, &c. as if the Offender were the true Owner thereof; every such Person, being thereof lawfully convicted, shall be adjudg'd guilty of Felony, and suffer as in Cases of Felony, without Benefit of Clergy.

By this Statute, the Treasury may inspect and examine any Duplicates, which were transmitted by the present or late Managers and Directors of the *South-Sea Company*, for taking Subscriptions for encreasing the Capital Stock of the Company; and if they find any Errors or Mistakes therein, to the Prejudice of the said Company, or of the Publick, they shall rectify the same, by making Additions to the Stock and Annuity of the Company, or making any Substractions from the same.

The 9 *Geo. 1. cap. 6.* reciting the Clause in the Act 7 *Geo. 1. Sess. 2.* for reducing and sinking Two Millions of Pounds *Sterling*, Part of the Capital Stock which belonged to the *South-Sea Company*; repeals the same, and enacts, that the said Sum of Two Millions shall be revived, and again added to the Stock of the said Company; and the proportional Part of the Annuities of the said Company, payable at the Exchequer in Respect of the said Two
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Millions,

Millions, with all Arrears thereof, shall also be revived, and become again payable to the Company: And the Stock and Annuities by this Act reviv'd, shall be divided amongst all the Proprietors of the Capital Stock of the Company, in Proportion to their several Interests therein; and Credit shall be given for the same in the Company's Books.

After the 24 June 1723, the whole Capital Stock of the *South-Sea* Company, computed to amount to about 34,000,000 *l.* and the Shares of the Proprietors of the same, shall be divided into two equal Parts or Moieties; one Moiety whereof shall be converted into a Joint-Stock, attended with certain Annuities payable out of the Funds of the Company, in Lieu of all Dividends and Profits, such Moiety is entitled to; and the same Moiety from thenceforth to be called the Joint-Stock of the *South-Sea* Annuities: And the other Moiety of the said whole Capital Stock, shall remain in the said Company as a Joint-Stock in their own Right, attended with the Residue of the said Funds, 'till redeem'd by Parliament; and also attended with the several Sums for Charges of Management, and all other Benefits, Profits of Trade, Advantages, &c. now belonging to the *South-Sea* Company.

The *South-Sea* Company shall have and receive at the Exchequer, out of the Duties, &c. charged with their whole Annuities payable there, the yearly Sum of 845,062 *l.* as the Annuity to attend the Moiety so converted into the said Joint-Stock of the *South-Sea* Annuities 'till 24 June 1727, and from thence so much yearly as the Interest of the same
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Moiety shall amount to at *4 l. per Cent.* 'till Redemption as aforesaid, by weekly or other Payments, &c. as before the making such Separation; nevertheless, in Trust for the prietors, who shall be entitled to the said *South-Sea* Annuities; And all the Principal Moneys in the Joint-Stock of the said Annuities, shall be deemed one Capital Stock, on which the Annuities are to be attending; and all Persons in Proportion to their Annuities, shall have a Share in such Stock; and the Shares therein, and the proportional Annuities, shall be assignable and transferrable as this Act directs.

And the proportionable Shares which every Person shall be entitled to in the said Annuities, with the proportional Annuities to attend the same, shall be written into new Books of the Company; so that the Annuities founded on this Statute may be ascertained, and the future Transfers thereof may plainly appear. The said Annuities to be free from all Taxes, Charges and Impositions whatsoever: And no Stamp-Duties shall be chargeable on any the Transfers of the said Stock or Annuities.

The Company shall continue to enjoy the Residue of the said Annuities, computed at *806,668 l. 9 s. 1 d.* 'till the said 24th of *June* 1727, and afterwards to be allowed *4 l. per Cent. per Annum*, 'till Redemption by Parliament, as the yearly Fund to attend the said remaining Moiety of the Capital Stock; and shall likewise have the whole Sums of *8000 l.* and *1397 l. 9 s. 6 d. per Annum*, already settled for the Charges of Management, and en-

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joy all the Profits of Trade, and other Privileges, &c.

On Repayment by Parliament to the *South-Sea Company*, at any Time after 24 June 1727, of the whole Capital Sum; one Moiety for the Use of such Persons as shall then be Proprietors of the *South-Sea Annuities*, and the other Moiety thereof on Account of the Capital Stock continued to the Company in their own Right; and upon Payment of all Arrears due on the yearly Funds attending the same respectively, &c. then the yearly Annuities payable to the said Company, in Trust for the *South-Sea Annuitants*; and in their own Right, &c. shall cease and determine.

By 13 *Geo. 1. cap. 8.* It shall be lawful for the Governor and Company of Merchants of *Great Britain*, trading to the *South-Seas*, &c. by and with the Consent and special Licence of the United Company of Merchants of *England* trading to the *East-Indies*, first had and obtained under their common Seal, to send to the Island of *Madagascar* four Ships or Vessels every Year, during the Continuance of this Act, and to take and receive Negroes on Board such Ships so licensed, and transport them to *Buenos Ayres*; and the taking in, transporting and delivering such Negroes there, shall not be deem'd a breaking of Bulk, nor shall the *South-Sea Company*, their Agents, or Servants, in Regard to their taking in and transporting them, be liable to any Forfeitures or Penalties whatsoever.

But if any Ship in the Service of, or belonging to, or employ'd by, or under the

Authority and Direction of the said Company, shall sail or go to any Coast, Island, Port or Place, within the Limits of Trade granted to the *East-India* Company, other than to *Madagascar*; every such Ship, with all the Guns, Tackle, Apparel and Furniture thereto belonging, or the Value thereof shall be forfeited, &c. And if any Goods, Merchandizes or Effects, Negroes only excepted, shall be directly or indirectly purchas'd or acquir'd, or be traded or trafficked for, or exchanged or barter'd; also if any such Goods, &c. shall be shipped, or receiv'd on board any such Vessel, at any Port or Place beyond the *Cape of Good Hope*, the Company shall be deem'd Traders to the *East-Indies*, contrary to Law, and forfeit not only every such Ship, with the Guns, Tackle, &c. And all the Goods so traded for, or receiv'd on Board, but shall likewise, according to the Tenor of the Act 9 & 10 W. 3. forfeit double the Value thereof.

And the *East-India* Company, upon their granting Licences as aforesaid, may take such Security from the *South-Sea* Company, for securing the Trade to the said *East-India* Company within their Limits, as they shall think fit, and may insert in such Licences, such Provisoos, Conditions, or Restrictions, as shall be thought reasonable.

By the 3 Geo. 1. cap. 16. Out of the Surplusses of the *Sinking Fund*, at the Feast of *St. John Baptist* 1730, there shall be issued to the *South-Sea* Company, and paid quarterly afterwards, such Moneys as shall be in the Exchequer, for redeeming Part of the Annuities attending on the Capital Stock or Sum due to
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the Company, 'till the Payments shall amount in the whole to One Million; and after such Payments made, a proportional Part of the said Capital Stock and Annuities, shall cease and determine for the Benefit of the Publick. And the *South-Sea* Company shall forthwith, upon the Receipt of the said One Million, or as soon as conveniently may be, distribute the same amongst all the Proprietors of their Capital Stock, towards sinking so much of their Shares in the said Stock, by even and equal Dividends amongst them all, in Proportion to their respective Shares therein.

The Sub-Governor, Deputy-Governor, or any of the Directors, after the Payment hereby directed shall take Place, shall not be disqualified to continue Sub-Governor, &c. if by Reason thereof, there shall not remain in their own Names, so much Capital Stock, as they were before required to have; so as he or they respectively, within three Months after being oblig'd to receive Money in Discharge of any Part of their Share in the said Capital Stock, which will reduce the same under the Sum required for Qualification, obtain by Purchase or otherwise, so much more Capital Stock, as shall compleat the Sum necessary for such Qualification.

And Trustees that shall receive Money for others, who claim distinct Interests in the said Stock, are to lay out and dispose thereof, in the Purchase of so much other Capital Stock of the same Kind, as at the common Market Price of such Stocks, the Moneys receiv'd shall, as near as may be, extend to purchase, &c.

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The Statute 3 *Geo. 2. cap. 20.* ordains, That if at the End of any one Quarter of a Year, to be computed at each of the most usual Quarters, from *Lady-day 1730*, the Produce into the Exchequer, of the Moneys arising from the several Duties and Revenues, appropriated particularly to discharge the Annuity or Allowance for Charges of Management to the *South-Sea Company*, in Respect of their original Capital Stock of Ten Millions, shall not be sufficient for making good any Deficiencies therein, to discharge the said quarterly Annuity or Allowance, that shall at any Time be due, or so much thereof as shall be then unredeem'd; then the same shall be made good out of any Money, which at the respective Times of such Deficiencies happening, shall be in the Exchequer, arising from the Duties and Revenues called the *Aggregate Fund*, establish'd by the Act 3 *Geo. 1.* which shall be more than sufficient to answer and pay what will then be due and demandable, for any prior Charges or Incumbrances on the said Fund.

By 4 *Geo. 2. cap. 5.* Out of such Money as shall be in the Exchequer, of the Surplusses, commonly call'd the *Sinking Fund*, at *Michaelmas 1731*, there shall be paid to the Governor and Company of Merchants of *Great Britain*, trading to the *South-Seas, &c.* towards redeeming Part of the Capital Stock of Annuities remaining due to the said Company 1,000,000 *l.* Sterling; and a proportionable Part of their said Capital Stock of Annuities shall cease, for the publick Benefit.

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But if at the said Time, there shall not be Money enough in the Exchequer, arisen from the said Surplusses, to pay the said Sum of One Million, upon Application by the Company to the Commissioners of the Treasury, Ten Days before the said Day, they may permit any Persons to lend to his Majesty so much Money as shall be wanting to compleat the same, upon the Credit of the growing Produce of the said Surplusses of the *Sinking Fund*, and to be repaid thereout, with Interest not exceeding four *per Cent.* And in such Case the Money so advanced, shall be issued to the Company, to compleat the said Payment.

The *South-Sea Company* shall, as soon as may be, divide out the said Money amongst the Proprietors of their Annuities, towards discharging so much of their Capital Stock of Annuities.

By the 5 *Geo. 2. cap. 17.* A Provision is made, that out of the Moneys in the Exchequer of the Surplusses, called the *Sinking Fund*, at the Nativity of *St. John Baptist* 1732, there shall be issued to the *South-Sea Company*, towards redeeming Part of the Annuities attending on the Capital Stock due to the said Company, 1,000,000*l.* and a proportional Part of their Capital Stock shall cease, for the Benefit of the Publick: Also with the same Powers, &c. as in the Statute 3 *Geo. 2. cap. 16.*

The Stat. 6 *Geo. 2. cap. 25.* enacts, That out of the *Sinking Fund* at *Michaelmas* 1733, shall be paid and applied to the *South-Sea Company*, for redeeming Part of the *South-Sea Annuities*, 1,000,000*l.* Sterling; and a proportionable Part of their Capital Stock of An-

166 Of Trading Companies,

nuities, to cease for the publick Benefit: With the like Powers and Provisions, as in the Act 4 Geo. 2. cap. 5.

By the Statute 6 Geo. 2. cap. 28. It is enacted, That after the Twenty-fourth of June 1733, the Capital Stock of the *South-Sea Company*, which amounts to 14,651,103 *l.* 8 *s.* 1 *d.* and the Shares of the respective Proprietors shall be separated into four equal Parts: And three fourth Parts of the said Stock, which will amount to 10,988,327 *l.* 11 *s.* shall be made a Joint-Stock attended with Annuities, payable out of the Funds of the said Company, after the Rate of four *per Cent.* till Redemption by Parliament, and shall be call'd *The New Joint-Stock of South-Sea Annuities*; and the other fourth Part, amounting to 3,662,775 *l.* 17 *s.* 4 *d.* shall remain in the said *South-Sea Company*, as a Trading or Capital Stock, attended with the Residue of the Annuities of Funds, payable to the Company for their whole Capital, until Redemption; and with the Sums allowed for Charges of Management, and all Effects, Profits of Trade, Debts, Privileges and Advantages belonging to the said Company.

The Trading Capital of the Company shall be charged with the Payment of the said new Annuities, at 4 *l.* *per Cent.* to the Proprietors thereof, and also for Payment of the former Joint-Stock of *South-Sea Annuities*: Provided that the said Company shall have receiv'd their Annuity payable to them at the Exchequer; and on Failure of paying the same, or within sixty Days after, then such Trading Stock shall likewise be charged with the Payment of Interest, after the Rate of five *per Cent.*

But if any Deficiency shall happen in the Funds of the *South-Sea* Company, the new Annuities are to bear a proportional Part of such Deficiency.

And the principal Moneys in the said new Joint-Stock of *South-Sea* Annuities, shall be a Joint-Stock, any Share wherein shall be transferrable, &c. And the *South-Sea* Company shall cause to be constantly kept within the City of *London* an Office and Books, in which all Transfers of the said new Annuities are to be entered, and shall be signed by the Party making such Transfer, or by his Attorney; and the Person to whom transferred, or his Attorney, shall underwrite his Acceptance; and no other Method of transferring the said Annuities shall be good in Law. These Annuities to be Personal Estate, and not liable to foreign Attachment; and any Person possessed of such new Annuities, may bequeath the same by Will in the same Manner as any other Personal Estate.

The Accomptant of the *South-Sea* Company shall twice in every Year, at *Christmas* and *Midsummer*, or within one Month after, state an Account of the Company's Affairs, which shall be laid before the next General Court, in order to their declaring a Dividend; and all Dividends shall be made out of the clear Profits, and not exceed what the Company may reasonably divide, without incurring any farther Debt; and so as their Dividend be not at any Time any more than four Pounds *per Cent. per Annum*, until the present Debts be paid off: And the *South-Sea* Company, and their Trading Stock, shall exclusively from

the said new Joint-Stock of Annuities, be liable to all the Debts and Incumbrances of the said *South-Sea* Company.

After the 25th of *December* 1733, no Person shall be qualified for being Governor of the Company, unless he have in his own Name and Right 5000 *l.* in the Trading Stock; nor shall any Person be qualified to be Sub-Governor, who shall not have 4000 *l.* a Deputy-Governor to have 3000 *l.* and the Qualification of a Director is 2000 *l.* in the said Trading Stock. And every Member who shall then have in his own Name and Right 500 *l.* in the Trading Stock, shall have one Vote in every General Court of the Company; and a Member having 2000 *l.* shall have two Votes; if he has 3000 *l.* he is to have three Votes; and every Member that hath 5000 *l.* shall have four Votes.

The *South-Sea* Company may exercise all such Powers, and enjoy the like Immunities, Benefit of Trade, &c. as the said Company might have had or enjoyed, if this Act had not been made. And the Fund of the Trading Stock shall not without Consent of the Company, be liable to be redeemed by Parliament, until the new *South-Sea* Annuities shall have been reduced by such Redemption to the Sum of 3,500,000 *l.*

No new Bonds, or Bonds bought up with the Company's Money, shall be issued without the Consent of the Proprietors in a General Court, who are to be first acquainted with the Uses for which the said Bonds are intended; and no Calls shall be made, except Notice be first given in a General Court, and the Resolutions

solutions of the Proprietors taken in another General Court. But this Clause as to the Company's Bonds, is altered by the 7 *Geo. 2. cap. 17.*

By 9 *Geo. 2. cap. 34.* Out of the *Sinking Fund* at *Christmas* 1736, there shall be issued to the *South-Sea* Company, towards redeeming part of the *New South-Sea* Annuities, 1,000,000*l.* With the usual Provisions for Annihilation, as in Stat. 4 *Geo. 2. cap. 5.*

Interlopers and private Traders, Vide *East-India* Company.

C H A P. VIII.

Of other Traders not in Companies, and of Brokers and Stock-jobbing.

Over and above the incorporated Companies of Merchants before mentioned, there are many considerable Traders to other Parts, who Trade either singly on their own Foundations, or in Partnership together.

The Merchants of our own Nation and others trading to the *West-Indies*, carry on an advantageous Traffick to *Jamaica*, *Barbadoes*, *Virginia*, *Nevis*, and other Places: These Merchants export from hence all Sorts of Commodities of the Manufacture of *England*, and also those of other Nations; and the valuable Products of those Plantations, are in Abundance

dance imported in *England*, as Tobacco, Sugars, Cotton, Indico, Ginger, Pepper, Beaver, Deer-Skins, &c. Of this Trade and Merchandize, more is observed under the Head *Plantations*.

Our *Canary* Merchants trade to the seven Islands called the *Canary Islands*; and were formerly a Company or Corporation, by Letters Patent from the Crown; but in the Reign of King *Charles II.* their Patent was vacated. They export our Manufactures, as Kerseys, Bayes, Serges, Perpetuana's, *Norwich* Stuffs, Hats, Stockings, Haberdashers Ware, Iron and Tin wrought, great Quantities of Poor Jack, Pilchards, Herrings, Beef, Pork, Wheat, and other Grain; Linnen Cloth, Pipe-Staves, Hoops, &c. The Imports from thence are *Canary* Wines, Varnish, Hides, Tobacco, Logwood, Cochineal, Campechiana, Sylvester, Indico, and other *West-India* Commodities.

The *Italian* Merchants, and those which Trade to *Leghorn, Venice, Genoa, Sicily, &c.* Import Wines, Oil, wrought and raw Silk, Velvet, Plushes, Damask, Cloth of Gold and Silver, Grograms, Fustians, Allom, Annice-Seeds, Rice, Almonds, Saffron, Brimstone, Gold and Silver, *Venice-Treacle*, Quick-Silver, Looking and Drinking Glasses, Marble and some other rich Commodities: And they export Cloth, Bayes, Serges, Says, and Perpetuana's, Lead, Tin, Pewter, white and red Herrings, pickled Salmon, Pilchards, *Newfoundland* Fish, *Russia* Hides, Tallow, Calves-Skins, Tobacco, with some Drugs, and Spices of *Persia, India* and *Arabia*.

To

To *Spain* and *Portugal*, &c. we have very considerable Trade, and our Merchants trading thither, import Wines of *Malaga*, *Alicant*, and other Wine, Brandy, Fruits, Confections, Olives, Oil, Sugar, Ginger, Allom, white Marble, Liquorice, Annice-Seeds, Sodobarilla, Soap, Rosin, Plate and Species of Gold and Silver, Pistoles, and Pieces of Eight, &c. and they export Woollen Manufactures, Serges, Bays, Says, Perpetuana's, Cloth dy'd, and dry'd Calve-Skins, Lead, Shot, Iron, Tin, Herrings, Pilchards, Salmon, Poor Jack, Silk Stockings, and some *East* and *West-India* Goods, &c. Also the *English* and *Dutch* have had a great Interest in the *Spanish* Plate Fleet, having from the Beginning largely contributed towards the Charges of their Expeditions.

The *French* Merchants import Claret, white Wine, Brandy, Paper, coarse and fine Linen, Tabby and other Silks, Canvas, Dowlas, Buckram, Glafs, Cards, Salt, &c. and export Woollen Cloth, Kerseys, Cottons, Bays, Friezes, Pilchards, Herrings, *Newfoundland* Fish, Lead, Gauls, Cotton-wooll, &c. During the Reign of King *Charles II.* *England* drove a Trade with *France*, in which the *French* were then the greatest Gainers; for they having prohibited our Woollen Manufactures, and we still admitting their Silks, Wines, Brandy's, Vinegars, Hard-ware, &c. We lost considerably upon the Balance with them.

The *Dutch* Merchants, or such as Trade to the *Low Countries*, *Holland*, *Flanders*, &c. import Salt-petre, Butter, Cheefe, Tapestry, Quick Silver, *Rhenish* Wines, Furs, Pictures, Haberdashers Wares, &c. which they exchange
for

for Woollen Cloth, Lead, Tin, Sheep-Skins, and other *English* Commodities.

In every Country abroad, there are *English* Merchants, dealing in all our Native Commodities, Goods and Manufactures; as we have here Merchants trading with all Countries whatsoever, for such Merchandizes which we have Occasion for.

The Merchants that Trade to *Scotland*, bring from thence Cloths, Serges, Stockings in abundance, and divers other Sorts of Woollen Manufactures, the best Salmon, and all other Sorts of Fish, Hides, Skins, Tallow, Lead, Sea-Coal, Allom, Corn, Linnen, &c.

In the Kingdom *Ireland*, the Weights, Measures and Method of Trading by their Merchants are the same as here; the natural Product of the Country is likewise much the same, but the Manufactures not having the same Vent, by Reason of the Restrictions on their Exportation, are far from being improved to that Degree.

A Merchant that exported Woollen Manufactures abroad, was prosecuted for using the Trade of a Clothier, not being brought up an Apprentice to it: This Merchant employed Clothiers who had served Apprenticeships to the Trade, to work the Cloths in his House, at his own Charge, and with his own Materials, which Cloths he had sent into *Turkey* as Merchandize.

It was here held, that the Merchant was the Trader, and the Person who exercised the Trade; because he employed the rest, who work'd but as his Servants, and the Loss and Gain was his: And few would undergo the
Trouble

Trouble of being Apprentices, if they might employ others to work for them.

But one of the Judges was of Opinion, that the Master Workman was the Person that used this Trade, and the Merchant had done nothing but what was the proper Work of a Merchant in his own House, which cannot be a publick Use of the Trade; and 'tis the Interest of Merchants, that their Cloth be well wrought, when the Clothworker careth not how 'tis done, so he hath his Money. 2 *Salk. Rep.* 610. 3 *Mod.* 317. *Carthew* 162.

The Laws and Statutes concerning Exchange Brokers, and Stock-jobbing.

BROKERS are those Persons that contrive, make and conclude Bargains and Contracts between Merchants and Tradesmen, in Matters of Money and Merchandize, for which they have a Fee or Reward; and they are called *Exchange Brokers*, in some of our Statutes.

By the Statute 8 & 9 W. 3. *cap.* 32. For restraining the ill Practice of Brokers and Stock-jobbers; No Person shall use or exercise the Office or Employment of a Broker, in *London* or *Westminster*, &c. in making or concluding Bargains between Merchant and Merchant, or others, concerning any Wares and Merchandizes, or Moneys to be taken up by Exchange, or Tallies or Orders, Bills, Notes, Stock of any Company of Trade, &c. until such Person shall be admitted and licensed by the Lord Mayor and Court of Aldermen of *London*. And upon Admittance of any such
2 Broker,

Broker, he shall take an *Oath*, that he will truly and faithfully execute the Office between Party and Party, without Fraud or Collusion, according to the Purport of the Act, &c. Likewise he shall give Bond to the Lord Mayor, &c. in the Penalty of 500*l.* for the faithful Execution of his Office, without any Fraud or corrupt Practice.

The Number of such Brokers shall not at one Time exceed One hundred; and the Lord Mayor and Court of Aldermen shall cause their Names and Places of Habitation, to be publickly affixed on the *Royal Exchange*, and other publick Places: And every Sworn Broker, after his Admittance as aforesaid, shall carry about him a Silver Medal having the King's Arms on one Side, and the Arms of the City of *London* with his own Name on the other Side; which he shall produce at the concluding of every Bargain to the Parties concerned, upon Pain to Forfeit 40 *s.* for every Omission.

If any Person shall act as a Broker, not being admitted according to this Act, he shall forfeit 500 *l.* besides such other Forfeitures as he may any Ways incur thereby; and in Case any one shall knowingly employ any Person to deal for him as a Broker, or Stock-Jobber, who is not admitted and sworn, as aforesaid, such Person shall forfeit the Sum of 50 *l.* And if any Person, not being a Sworn Broker according to this Statute, shall act and deal in discounting Tallies or Bills, or in Stock-Jobbing, in selling Stock, or any Security upon any Funds granted by Parliament, he shall be liable to the Forfeiture
of

of 500 *l.* and to stand in the Pillory in some publick Place in *London*, three several Days, for the Space of one Hour.

Every Sworn Broker is to keep a Book or Register, and therein enter all Contracts and Bargains that he shall make between any Persons, within three Days after any Contract made, and for omitting so to do, he forfeits 50 *l.* And if any such Broker shall directly or indirectly take above 10 *per Cent.* for Brokage, he shall for every Offence forfeit 10 *l.* Also if any Sworn Broker deal for himself in the Exchange or Remittance of Moneys; or buy any Tallies, Orders, Bills, or Shares in any Joint-Stock, for his own Use, or shall buy Goods or Merchandizes to sell again, or make any Profit in buying or selling any Goods more than the Brokage allow'd, he shall forfeit the Sum of 200 *l.* and be for ever incapable to act as a Broker.

All Policies, Contracts, or Agreements, upon which any Premium is, or shall be given or paid, for Liberty to deliver, receive, accept, or refuse any Share in any Joint-Stock, Tallies, Orders, Exchequer Bills, &c. Other than such Policies and Contracts as are to be perform'd within three Days from the Time of making the same, shall be null and void, and every such Premium shall be paid back: And if any Premium be given contrary to the Intent and Meaning of this Act, with the Privy of a Sworn Broker; or if any Person shall trade therein as a Broker, without being lawfully admitted, and the same shall come to the Knowledge of any Sworn Broker, in every such Case, such Sworn Broker shall
forthwith

forthwith discover the same; and, in Default thereof, he shall be disabled to exercise the Trade and Office.

And all Penalties and Forfeitures given by this Act, shall be recover'd by Action of Debt, &c. in any of the King's Courts of Record at *Westminster*, one Moiety whereof to go the King, the other to him that shall sue for the same.

By the 6 *Geo. 1. cap. 18.* It is declar'd, that all Undertakings, tending to the common Grievance and Prejudice of his Majesty's Subjects, or great Numbers of them, in their Trade, Commerce, &c. and particularly the acting as a Corporate Body, by raising Stocks, and the transferring or assigning any Share in such Stock, without Authority by Act of Parliament or Charter to warrant the same; and all acting under any Charter formerly granted, for particular Purposes, by Persons who shall endeavour to use the same Charters for raising a Capital Stock, or making Transfers or Assignments thereof, not intended by such Charter to be rais'd or transferr'd; and acting under any obsolete Charter, &c. shall for ever be deem'd to be illegal and void.

All such Undertakings and Attempts, and Things whatsoever for furthering, countenancing or proceeding therein, and relating thereto, shall be deem'd publick Nuisances: and the Offenders be liable to Fines and Punishments accordingly, and also incur any farther Pains, &c. as are provided by the Statute of *Premunire*. And if any Merchant or Trader shall suffer any particular Damage in his Trade, &c. by Occasion of any Undertaking

dertaking by this Act declar'd unlawful, he may have his Remedy for the same by Action, to be grounded on the Statute, against the Persons, Societies, or Partnerships engaged in such Undertakings, &c. and in every such Action the Plaintiff shall recover treble Damages with full Costs.

If any Broker, or Person acting as a Broker, for himself, or in Behalf of others, shall bargain, sell or buy, or contract for the bargaining, selling or buying any Share or Interest in any of the Undertakings hereby adjudged to be unlawful, or in any Stock of such Undertakers, he shall not only be disabled to Act as a Broker for the future, but shall forfeit 500 l. One Moiety to the Use of the Crown, and the other to the Informer.

By 7 Geo. 2. cap. 8. All Contracts which shall be entered into, upon which any Premium shall be given for Liberty to deliver or receive, accept, or refuse any Publick Stock, or Securities, and all Wagers, Puts and Refusals, relating to the present or future Price of Stock or Securities, shall be void; and all Premiums upon such Contracts or Wagers shall be restored to the Person who shall pay them, who within six Months from the making of such Contract, &c. may sue for the same with double Costs: And it shall be sufficient for the Plaintiff to alledge that the Defendant is indebted to him, or has received to his Use, the Money or Premium so paid; whereby the Action accrued, according to the Form of the Statute, without setting forth the special Matter; and a Bill in Equity may be preferred for discovering any Contract or Wager, and

the Premium given, which the Defendant shall be obliged to Answer upon Oath, &c.

Every Person who shall make any Contract, upon which any Premium shall be given for Liberty to put upon, deliver, accept, or refuse any Stocks or Securities, or any Contract in the Nature of Puts and Refusals, or shall lay any Wager, &c. as aforesaid, (except such Persons who *bona fide* sue, and with Effect prosecute for Recovery of the Premium paid by them; and that shall voluntarily before any Suit commenced, repay or tender such Premium which they shall have received; and except those Persons as shall discover such Transactions in any Court of Equity) shall forfeit 500 *l.* And all Persons negotiating, or writing such Contract, incur the like Penalty and Forfeiture; which Penalties may be recover'd by Action, of Debt, or Information, in any of his Majesty's Courts of Record at *Westminster*.

No Money or other Consideration shall be voluntarily given, or received for compounding any Difference for the not delivering, or receiving any Publick Stock, or Securities; but all such Contracts shall be specifically executed; and all Persons who shall compound any Difference, shall forfeit 100 *l.* And no Person who shall sell Stock to be deliver'd and paid for at a certain Day, if it be refused or neglected to be paid for, shall be obliged to transfer the same; but it shall be lawful for such Person to sell such Stock to any other, and to receive or recover from the Person who contracted for the same, the Damage which shall be sustain'd: And any Person, that shall buy Stock, to be accepted and paid for on a
future

future Day, and which shall be refused or neglected to be transferred, may buy the same Quantity of such Stock of any other Person at the current Market Price, and recover and receive from the first Seller, the Damage sustained.

All Contracts made for the buying or transferring of Stock, whereof the Persons on whose Behalf the Contract shall be made to transfer the same, shall not at the Time of making any such Contract be actually possess'd in their own Right, or in the Name of Trustees, shall be void; and every Person in whose Behalf, and with his Consent any Contract shall be so made to sell Stock, of which such Person is actually possessed, &c. shall forfeit the Sum of 500*l.* One Moiety to the Crown, and the other Moiety to them that shall sue for the same: And any Broker or Agent, who shall negotiate such Contract, and shall know that the Person on whose Behalf the Contract shall be made, is not possessed of the Stock, shall forfeit 100*l.* to be divided between the King and the Prosecutor.

Every Broker, or Person who shall Act as a Broker, receiving Brokerage in the buying or disposing of Stocks, shall keep a *Brokers Book*, in which he shall enter all Contracts that he shall make, on the Day of the making such Contracts, with the Names of the principal Parties, as well Buyers as Sellers; and such Broker who shall not keep such Book, or shall wilfully omit to enter any Contract, shall for every such Offence forfeit 50*l.* One Moiety to his Majesty, and the other Moiety to the Person suing for the same.

But nothing in this Act shall extend to any Contracts for the Purchase or Sale of Stock, to be made in pursuance of any Decree or Order of the Court of Chancery, with the Privy of the Accountant General of that Court: Nor shall any Thing in the Act, hinder any Person from lending Money on Stock, or Contracts for redelivering or transferring thereon, so as no Premium be paid for the Loan more than legal Interest.

In *Easter Term 1693*, An Action of Covenant was brought in the Common Pleas against a Person, wherein the Case was as follows, *viz.* In Consideration of twenty Guineas paid by the Plaintiff to the Defendant, on such a Day, he did Covenant, &c. upon Payment of 500 *l.* more within one Month next ensuing, upon Notice to transfer to him certain Shares in the *East-India Company*; and the Plaintiff did aver, that he tendered the 500 *l.* within a Month, &c. The Defendant pleaded, that the Plaintiff did not tender this Money within the Month, for that before the same 28 Days were past, from the Day of the Date of the Agreement: And the Truth was, he did tender the 500 *l.* after 28 Days, but within a Kalendar-Month; so that the Question was; what should be intended a Month within the Agreement.

The Counsel who argued for a Kalendar Month in this Case, insisted that the Statute 13 *Hen. 4. cap. 7.* gives the Justice Power within one Month next after a Riot committed, to enquire into the same, and that it hath been held they may make such Enquiry after 28 Days, which shews that the Parliament intended a Kalendar-Month: And as such a Month

Month was intended by them, so the Court may judicially take Notice of such a Month here, &c. To which it was answered, the Words in this Agreement, viz. to pay 500*l.* within a Month next following, shall be accounted the next or nearest Time to the Day of the Agreement, which must be 28 Days; and regularly a Month is accounted no more than 28 Days, unless 'tis in a *Quare Impedit*, and there a few Days more are allowed on Purpose to save a Lapse: If a Lease be made, rendring Rent at the two most usual Feasts in the Year, or within a Month after; and if 'tis behind by the Space of eight Weeks, these eight Weeks, or two Months, shall be reckoned according to 28 Days; so the Suggestion on a Prohibition, to be proved within six Months, &c.

By the Court it was said, that in common Parlance, the Month is taken to be 28 Days, and therefore it must be so many Days, according to the known and common Acceptation of the Word; for Words and Phrases of Speech are to be expounded and construed as they are generally understood: And so it was adjudg'd in this Case: 4 *Mod. Rep.* 185. 186.

It is observable in a Case of this Nature, that 'tis the common Custom amongst Merchants to reckon by Kalendar-Months; the Usance in *England* is computed by them, and if a Note is made for any Sum of Money to be paid, suppose in six Months, it will not be demanded before the Expiration of so many Kalendar-Months among Trading People. And it seems plain here, that the Party has only had recourse to this Shift to avoid the Performance of the Bargain he had made, to make

over certain Shares in the *East-India* Company's Stock, which probably having risen within that Time, he chose rather to break his Word, than lose the greater Benefit he expected, both by detaining the Buyer's twenty Guineas, and getting a higher Rate than had been agreed for between them for the Shares of Stock.

An Agreement was made, that the Defendant in an Action should pay so much Money within six Months, the Plaintiff transferring his Stock, which he agreed to do, the Defendant paying the Money, &c. It was held, that if either Party sue upon this Agreement, the one must aver and prove a Transfer of the Stock, or a Tender to be transferr'd, and the other must prove the Payment of the Money, or a Tender of Payment; for transferring in the first Part of the Bargain is a Condition Precedent, and tho' these are mutual Promises, yet where one Thing to be done, is the Consideration for doing the other, there a Performance of that Thing must be averred: Therefore the Lord Chief Justice *Holt* obliged the Plaintiff either to prove a Transfer, or a Tender and Refusal within the six Months. *Trin. 2 Ann. 1 Salk. Rep. 112.*

Action of Covenant was brought upon an Agreement in Writing for *South-Sea* Stock, wherein the Plaintiff Covenanted by Indenture to transfer the Stock before such a Day, or within four Days after; and the Defendant covenanted to accept the same, and pay so much Money for it, within the Time aforesaid, which he had not done: It was here insisted, that the Plaintiff in this Action ought

to have set forth a Request to perform the Covenant. But the Court resolved, that this is a mutual Covenant, and in such Case the Plaintiff need not lay any Request made by him to the Defendant for Performance of it, or that he on his Part was ready, and offered to perform it; for the Time is not indefinite, because the Acceptance of the Stock, and Payment of the Money by the Defendant, was to be within the Time aforesaid, which must be in the four Days, so that there is no Occasion of any Averment of a Request made. *Case of Wilkinson versus Meyer. Mod. Cases in Law and Equity 173.*

In Covenant brought on a Deed-Poll, the Plaintiff declared, that by the said Deed the Defendant covenanted to pay 15,000 *l.* for so much Stock in the *South-Sea Company*; which the Plaintiff covenanted to transfer on the 21st Day of *September, &c.* and at such a Place, at which Time and Place the Defendant also covenanted to receive the said Stock: Then he set forth the Custom of that Company to transfer the Stock at the *South-Sea House*, in such a Method, and between such Hours, &c. and that he was at the said House on the Day agreed, and offered then and there to transfer the same Stock, and stayed there *from Nine of the Clock in the Morning until Two of the Clock in the Afternoon*, and 'till the Books were shut; but that the Defendant, or any other Person for him, was not there to receive or accept the said Stock, and to pay the Money.

'Twas objected in this Case, that it did not appear that the Plaintiff had done all which

he was to do, to entitle himself to the Action; for having set forth the Method of transferring, he should have shewed more particularly the Time when the Transfer was to be made; and the rather, because the Court cannot take Notice of any special Time for that Purpose: Therefore not shewing, that he was ready at the Place where the Transfer was to be made, and at the last Instant of Time, and there and then tendered to transfer the Stock, his Declaration is ill.

The Court of Common Pleas was of Opinion, that there must be a Tender to transfer this Stock, but that an actual Transfer was not necessary, unless the Person to whom it was to be made, was at the Place and Time ready to accept it; and here the Time of Tender is the *last Hour* of the Day on which the Stock was to be transferred, and the Plaintiff having omitted that, cannot be entitled to this Action. *Mordant and Small's Case, Hill. 10 Geo. 1. Mod. Cases in Law and Equity* 218, 219.

By certain Articles of Agreement for the Sale of *South-Sea* Stock, the Plaintiff covenanted on such a Day, to transfer such a Quantity of Stock, upon Payment of 1638 *l.* and the Defendant agreed to accept the same, and then to pay the Money at or before the shutting up the Books for the *Christmas* Dividend; and it was farther agreed, that if the Defendant did not accept the said Stock, then the Plaintiff might sell it to any other Person at the Market Price, and return the Overplus, if it is sold at any higher Rate; but in Case it sold at a lower Rate, then the Defendant to
make

make up the Deficiency to the Plaintiff: And a Bond being given for Performance of the Agreement, an Action of Debt was brought thereon; and the Breach assign'd was, for that the Defendant did not pay the Deficiency of the above Sum for the said Stock. But the Defendant had Judgment, because the Residue of the Money was not due to the Plaintiff until he had made a good and legal Tender of the Stock, and the Defendant had then made Default; and as the Plaintiff did not shew this in the Declaration, it was adjudg'd he had not laid a sufficient Breach. *Hill. 10 Geo. 1. Mod. Cases in Law and Equity 68. 381. Wivel vers. Stapleton.*

In this Case it was said, that the Plaintiff was ready at the Office of the *South-Sea House*, to transfer, &c. And a Tender at the Office, is like the Tender of Rent at an House, which is the most notorious Place of the Premises demised; for the Office is the most notorious Part of the *South-Sea House*: And by the Statute 6 Geo. 1. which is a publick Law, Notice is taken of that House, so that the Court will intend that was the Place of Tender, &c. But it has been held, a Tender was not lawful, where the Plaintiff set forth it was made at the *South-Sea House*, and did not aver, that was the usual Place to make such Tender, *Ibid. 295.*

Articles of Agreement for assigning East-India Stock.

Articles of Agreement made, concluded and agreed upon, this Day of, &c. in the Year, &c. between A. B. of, &c. of the one Part, and C. D. of, &c. of the other Part, as followeth, viz.

THE said *A. B.* in Consideration of Ten Guineas to the said *C. D.* paid at and before the Sealing and Delivery hereof, the Receipt whereof is hereby acknowledged, doth covenant, promise and agree to and with the said *C. D.* his Executors, Administrators and Assigns, That if the said *C. D.* his Executors, &c. shall transfer, or cause to be transferred, Two Hundred Pounds of the general Joint-Stock of the Governor and Company of Merchants of *London*, trading to the *East-Indies*, to the said *A. B.* his Executors, &c. on or before, &c. now next following; and thereof shall give Notice in Writing at the Dwelling-House of the said *A. B.* three Days at the least before such Transfer, that then he the said *A. B.* his Executors, Administrators or Assigns, shall and will accept the said 200*l.* Stock, and also well and truly pay, or cause to be paid unto the said *C. D.* his Executors, Administrators or Assigns, at the Time of such Transferring, the Sum of 320*l.* of lawful *British* Money for the same; together with all such Sum and Sums of Money as shall after the Date hereof, and before such Transfer, become

become due or payable into the said Joint-Stock, on Account of the said 200*l.* Stock, by Virtue of any Order of a General Court, or other Courts: And then, and in such Case, all Dividends and Profits that shall after the Date hereof be voted, ordered, made, arise or happen on or in Respect of the said 200*l.* Stock shall be and remain to the said *A. B.* his Executors, Administrators or Assigns. But if the said *C. D.* his Executors, Administrators or Assigns, shall not transfer, or cause to be transferred, unto the said *A. B.* his Executors, &c. the said 200*l.* Stock as aforesaid, within the Time aforesaid, then this present Agreement to be void, and the said Ten Guineas to remain to the said *A. B.* *In witness* whereof the said Parties have hereunto set their Hands and Seals the Day and Year above written.

*Form of a Letter of Attorney to sell Stock in
the South-Sea Company.*

K NOW all Men by these Presents, That I *A. B.* of, &c. have made, ordained, authorized, impowered, constituted and appointed, and by these Presents do make, ordain, authorize, impower, constitute and appoint *C. D.* of, &c. Gentleman, my true, certain and lawful Attorney, for me and in my Name, for my Use, and on my Behalf, to sell, assign and transfer Five hundred Pounds *South-Sea* Stock, to which I am entitled, as by the Books of the Company appears, or any Part or Parcel thereof, to such Person or Persons as shall buy and accept the same, at and for such Price, and in such Manner as he my
said

said Attorney shall think fit, and to receive the Consideration-Money for the same; and upon Receipt thereof, Acquittances or other Discharges, for me and in my Name, or otherwise, to make, sign and give; hereby ratifying and confirming all and whatsoever he shall do in the Premises. *In witness* whereof I the said *A. B.* have hereunto put my Hand and Seal, the Day of, &c. in the Year of our Lord One Thousand seven Hundred and thirty-eight.

*An Order to receive Interest and Dividends of
Stock in the South-Sea Company.*

S I R,

PRAY pay my Dividend and Interest on One Thousand Pounds Stock, to which I am intitled in the *South-Sea Company*, for half a Year due at, &c. last, to the Bearer hereof, *Mr. C. D.* and this shall be a sufficient Authority for your so doing. Witness my Hand, &c.

A. B.

*To Mr. C. L. Accomptant to
the South-Sea Company.*

C H A P.

C H A P. IX.

Of Imbargoes on Ships, and Quarantains.

AN Imbargo is a Stop, Stay, or Arrest upon Ships or Merchandize, by publick Authority : And prohibiting Commerce either in the Time of War, or of the Plague, Pestilence, &c. is a kind of Imbargo on Shipping.

This Arrest of Shipping, is commonly of the Ships of Foreigners, in Times of War and Difference with States to whom they are belonging, being a Prohibition of State for Security against Enemies, and indeed to endamage them : But by an ancient Statute, foreign Merchants in this Kingdom are so far favour'd, as to have forty Days Notice to sell their Effects and depart, on any Difference with a foreign Nation ; tho' I believe this Liberty has been rarely allow'd in any late Times, because it is the common Practice of other Kingdoms, to make an absolute Seizure and Detainer of our Ships in such Cases.

The King may lay Imbargoes on Ships, or employ the Ships of his Subjects, in Time of Danger, for the Service and Defence of the Nation ; but these Imbargoes must be *pro bono publico*, and not for the private Advantage of a particular Trader or Company : And therefore a Warrant to stay a single Ship, on a private Account, is no legal Imbargo, a notable Case of which is that of Mr. *Sands* and Sir *Josiah Child*, in the Beginning of the
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Reign of King *William III.* which was as follows.

On the 13th Day of *December*, 34 *Car. 2.* Mr. *Sands* was going to the *Maderas* in the Ship called the *Expectation*, laden with divers Goods to trade there; and being about to sail, Sir *Josiah Child* caus'd a Complaint to be entered against him in the Admiralty Court, and thereupon Process issued out of the said Court to stop the said Ship from a Voyage to Infidels, without the King's Licence, and the Ship was arrested 'till Mr. *Sands* should give Security that he would not sail into any Part of the Limits of the *East-India* Company, which he refused to do.

In an Action on the Case brought by Mr. *Sands*, the Jury found, that the Governor and Company of *East-India*, &c. had a Patent granted them, by which they were incorporated, and had the whole Trade to the *Indies*, prohibiting all other Persons to trade within their Limits, and the Places in the said Patent contained, upon the Forfeiture of Ship and Goods; and that Mr. *Sands* had prepared this Ship to sail to the *Maderas*, and from thence to a certain Place in the *Indies*, within the Limits of the Company, to trade with the Infidels; to prevent which Sir *Josiah Child* Governor of the said Company, and others, deliver'd a Petition to the King in Council, praying that the said Ship might be stayed until Security was given not to trade within the Limits of the Company; whereupon an Order of Council was made, directing the Court of Admiralty to issue out Process against the Ship 'till such Security

Security should be given as aforesaid, and a Warrant was obtained upon this Order against the said Ship, by Force whereof she was stopped.

There was a Judgment for the Plaintiff *Sands* in the Common Pleas, and Damages recovered to 1500*l.* and upon a Writ of Error brought, the Error assign'd was in Point of the Judgment given, *viz.* Whether the Matter on the Record was sufficient to charge the Defendant *Child*? And as to that it was argued, that what was done by him was lawful. For it cannot be denied, but that the King by his Prerogative may stop the Ship of any Subject, and shut up the Ports of the Kingdom at his Pleasure, especially where the Safety of the Nation is concerned, *viz.* in Time of an imminent Danger; this is confirmed by daily Experience of Imbargoes laid on Outward bound Ships.

And as he may stop Ships, so he may restrain the Persons of his Subjects from departing the Kingdom, lest they should assist his Enemies; and after any such express Prohibition, 'tis a Contempt of the King's Authority to depart out of the Realm, and finable by Law. And to prevent such Departure of Ships the Method is, and always hath been, to inform the King of the Matter by Petition, who thereupon usually directs his Advocate or Proctor to require Caution that the Master shall not trade with Infidels, who are perpetual Enemies, on which Process issues out of the Admiralty, and the Ship is arrested; and this is in Conformity to the Common Law of the Land.

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It was here for Mr. *Sands* answer'd, that the stopping of this Ship was illegal. At Common Law no Man is prohibited to travel out of the Realm; the Seas are open, and he might go whither he would, without any Restraint upon his Person or Goods, whether he traded with Infidels or not; and this appears by the Statute of 26 *H. 8. cap. 10.* which gave the King Power during his Life, to restrain trading beyond Sea, to particular Places; which had been to little Purpose, if he could have done it by his Letters Patents, without the Help of an Act of Parliament; and the Common Law being restored by the Expiration of that Act, no Force or Restraint can now be put upon any Man's Property, without a Breach of the Peace and private Injury.

And no Inference can be made from Imbargoes, which are never laid upon Ships but in Time of War; and an Imbargo is a Prohibition by Advice of the Council, and not at the Prosecution of Parties, as this was, under the Pretence of trading to Infidels; for both Mr. *Sands* and his Ship's Crew might have gone to any Infidels, so that they would refrain from those of the *East-India* Company. The Defendant in this Action might as well have impounded a Man's Cattle, 'till he should give Security not to commit a Trespass; or have levied Money before Judgment, &c. So that what he did cannot be lawful; and the finding of the Charter is not material, for if by that they had any Power to stop the Ship, then there had been no Need of petitioning the Council.

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Then as to the Action being brought against the Agent, and not against the Company, 'tis well enough, because it is impossible to sue the Company; for it doth not appear that they were concerned in this Prosecution, or that it was done by their Order: And tho' the Defendant acted as Agent or Attorney, yet he must take Care to do what is lawful; and here even the Company itself could not justify what was done, neither shall their Agent or Attorney.

And afterwards in another Term the Plaintiff's Judgment was affirmed: But the Court declared, that the Partners of the Ship ought to have been joined with the Plaintiff in this Action; which might have been pleaded in Abatement, but this likewise was omitted, and therefore the Plaintiff had his Judgment. *Trin. 4 W. & M. 4. Mod. Rep. 176, 179, 181.*

Quarantain, is the Term of forty Days, wherein any Persons coming in Ships from foreign Parts infected with the Plague, are not permitted to land or come on Shore, until so many Days are expired.

Several Places in the *Baltick* being infected with the Plague, in the Reign of Queen *Anne*, an Act was then made, 9 *Ann. cap. 2.* That during that Infection, and at all Times hereafter, when any foreign Places shall be infected, all Vessels coming into *England* or *Ireland* from those Places shall make their Quarantain, in such Place and for such Time, and in such Manner, as hath been or shall be directed by the Queen, or her Successors; and that until the Ships shall be discharged, no Person or Goods coming or imported therein, shall

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come or be brought on Shore, or put in any other Vessel; nor shall any Person go on board such Ship, without Licence from him who is to see Quarantain performed: But that all Ships, Persons and Goods, shall be subject to such Orders touching Quarantain, as shall be made by the Queen, and her Successors, and notified by Proclamation.

And it is enacted, that if any Master of a Ship coming from a Place infected, shall come on Shore, or shall permit any Seaman or Passenger to come ashore, or go on board any other Vessel during the Time of Quarantain, without Licence as aforesaid, the Ship shall be forfeited to the Queen, &c. and shall be seized, or recovered in the Court of Exchequer for her Use; and the Person coming on Shore, or going on board any other Ship, may be compelled by him who is to see the Quarantain perform'd, to return to his Ship; and such Person after the Expiration of his Quarantain, being convicted by the Oath of one or more Witnesses, before a Justice of Peace living near the Place where the Offence was committed, shall forfeit a Sum not exceeding 20 l. to the Use of the Poor, &c. and in Default of Payment of it, shall be committed to the House of Correction, there to be kept to hard Labour for one Month.

If any Person shall go on board, and return from such Ship during the Quarantain, without Licence, he may be obliged to return again thereto, and to remain on board during the Time of the Quarantain, and the Master shall keep and maintain him on board the Ship. And the Person directed to take Care that the Quarantain be perform'd,
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may seize any Boat or Skiff belonging to such Ship, or there found, and detain it during the Quarantain; and if such Person voluntarily suffer any Seaman belonging to such Ship, or Passenger, to quit the Ship, while under Quarantain, he shall for every Offence forfeit 100*l.* to be recover'd in the Courts at *Westminster*, with Costs.

Justices of Peace of the Counties adjoining to the Place where Quarantain is to be made, are to cause Watches to be set Day and Night in convenient Places in the neighbouring Parishes, with strict Orders not to suffer any Person to come on Shore, or go on board the Ships, except such who are to see the Quarantain perform'd, or shall be licens'd. After Quarantain perform'd, and Proof thereof made on Oath by the Master, and two others belonging to any such Ship, before a Customer of the next Port, or his Deputy, and one Justice of the Peace near to the Port, *viz.* That the Ship, and all and every Person therein, have performed the Quarantain, and that they are all free from Infection; then the Customer, together with the Justice, shall give a Certificate thereof, and the Ship and Persons shall be no longer detained.

But it is provided, that after the Quarantain perform'd, the Goods shall be opened and aired in such Place, and for such Time, as by Proclamation shall be appointed.

The Statute 7 *Geo. 1. cap. 3.* Enacted, that during the Infection at *Marseilles* in *France*, and in all future Times when any Country or Place shall be infected with the Plague, all Ships, Persons, Goods and Merchandizes im-
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ported in such Ships, into any Port within *Great Britain* or *Ireland*, or the Isles of *Guernsey*, *Jersey*, *Alderney*, &c. from any Place so infected, or from any Place, the Inhabitants whereof are known to trade or correspond with any Country actually infected; or from any Place from whence his Majesty, with the Advice of his Council, shall judge it probable that the Infection may be brought; shall be obliged to perform their Quarantain in such Place, for such Time, and in such Manner as shall be directed by his Majesty, by his Order made in his Privy Council, notified by Proclamation: And 'till such Ships, Persons and Goods, shall have performed and be discharged from Quarantain, no Person or Goods shall be brought on Shore, or go or be put on board any other Ship, in any Place within his Majesty's Dominions; unless in such Cases, and with a proper Licence, as shall be directed by Order, made by his Majesty in Council, and notified as aforesaid.

When any Country shall be infected, and any Order concerning Quarantain and the Prevention of Infection shall be made by his Majesty; as often as any Ship shall attempt to enter into any Port, the principal Officer of the Customs, and such Person as shall be authorized to see Quarantain perform'd, shall go off to such Ship, or cause some other Person by him appointed so to do; and shall at convenient Distance, demand of the Person having Charge of the Ship, a true Account of the following Particulars, *viz.* The Name of such Ship; the Name of the Commander; at what Place the Cargo was taken on board; what

what Places the Ship touch'd at in her Voyage; whether such Places, or any and which of them were infected; how long the Ship had been in her Passage, how many Persons were on board when the Ship set sail; whether any, or what Persons, during the Voyage, had been or shall be then infected, how many died in the Voyage, and of what Distemper; what Ships he or any of his Company went on board, or had any of their Company come on board his Ship, in the Voyage; to what Place such Ships belong'd; and also the true Contents of his Lading.

And in Case it shall appear on such Examination, or otherwise, that any Person on board is infected, then it shall be lawful for the Officers of any Ships of War, or of any Forts or Garrisons, and all other his Majesty's Officers, whom it may concern, on Notice thereof given to them, and for any other Persons whom they shall call to their Assistance, to resist the Entrance of such Ship into any Port or Place; and to oblige any such Ship to depart out of the same, and use all necessary Means for either of the said Purposes, by firing of Guns upon such Ship, or any other Kind of Force and Violence whatsoever: And if such Ship shall come from any Place visited with the Plague, or have any infected Person on board, and the Master, &c. shall not discover the same, he shall be adjudg'd guilty of Felony, without Benefit of Clergy; also if such Master, &c. upon Demand made, shall not make a true Discovery, in any other of the Particulars before mentioned,

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tioned, he shall forfeit 200*l.* one Moiety to the Crown, and the other to him who will sue for the same in any of the Courts of Record at *Westminster, &c.*

If any Master, or other Person, having the Charge of a Ship liable to perform Quarantain, shall quit such Ship, or permit any Seaman or Passenger to leave the same, and go on Shore, or on Board any other Vessel, before Quarantain be fully perform'd, except in such Cases, and by proper Licence, as shall be directed by the Order made concerning Quarantain; or shall not, within convenient Time after due Notice given by the proper Officer, cause his Ship and the Lading to be convey'd into the Place appointed for Quarantain; then every such Ship, with the Tackle, &c. shall be forfeited to his Majesty, and may be seized, sued for, and recovered in the Court of Exchequer at *Westminster, &c.* and such Master, for every such Offence, shall incur the Forfeiture of 200*l.* and if any Person shall quit such Ship by going on Shore, or on Board any other Vessel, it shall be lawful for all Persons by Force and Violence, to compel such Person to return on Board; and every Person so quitting, &c. shall for every Offence suffer six Months Imprisonment, and also forfeit 200*l.*

If at any Time hereafter, any Place in *Great-Britain, Ireland,* or the Isles of *Guernsey, Jersey, Alderney, Sark* or *Man,* shall be infected, and the same made appear to the King in Council, it shall be lawful for his Majesty, with Advice of his Privy Council, during the Continuance of such Calamity, to make such Orders concerning Quarantain, and the Pre-
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vention of Infection, as shall be necessary for the Safety of his Subjects, and to notify the same by Proclamation; and all Persons, Officers Civil and Military, shall render due Obedience to all such Orders and Regulations, so made and notify'd. If any Officer of the Customs, or other Officer or Person whatsoever, to whom it shall appertain to execute any Orders concerning Quarantain, shall be guilty of any wilful Breach or Neglect of his Duty in that Behalf, he shall forfeit his Office, and be incapacitated, and likewise subject to 100 *l.* Penalty.

During Times of Infection, when any Part of *Great-Britain*, &c. or *France*, *Spain*, *Portugal*, or the *Low Countries*, shall be infected with the Plague, his Majesty by Proclamation may prohibit and restrain all Boats and Vessels, under the Burthen of 20 Tons, from sailing out of any Port or Place of *Great-Britain* or *Ireland*, or the Isles of *Guernsey*, &c. 'till Security be given by the Master to the principal Officer of the Customs, or Chief Magistrate, by Bond to the King in Penalty of 500 *l.* with Condition not to go to, or touch at any Country or Place, mentioned in such Proclamation, nor on Board any Ship at Sea, and not to suffer any Person to come on Board his Vessel from any other Ship, or receive any Goods whatsoever out of any other Ship: And if any such Vessel shall pass out of any Port or Place, before such Security given; she shall, together with her Tackle, &c. be forfeited to the King, and may be seized, sued for and recovered in the Court of Exchequer, &c. and the Master, and every Mariner of the Vessel, being thereof

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convicted before one or more Justices of Peace, shall forfeit 50*l.* one Moiety to the Informer, the other to the Poor of the Parish where such Offender shall be found, to be levied by Distress and Sale of the Offenders Goods; and for Want of Distress, shall be committed to Prison for three Months.

When any foreign Country or Place shall be infected, all Goods particularly specified for that Purpose, in Orders made relating to Quarantain, and the preventing of Infection, imported into any Part of his Majesty's Dominions, in any Vessel whatsoever, shall be subject to such Orders. And as often as his Majesty shall make any Orders concerning Quarantain, the Proclamation thereof shall be read in all Parish Churches, &c. within such Counties and Places as are specify'd in such Proclamation, upon the next *Sunday* after received, and the first *Sunday* in every Month afterwards, during the Time the same shall continue in Force.

If it shall appear to his Majesty, that any Vessel shall come into any Place in his Dominions from any Place infected, or being laden with any Goods taken on Board at any such infected Place, or from on Board any Vessel infected, or that there be any Persons or Goods on Board actually infected; in any of the said Cases, it shall be lawful for his Majesty, by Order in Council, to impower any Persons to burn such Ship, &c. and the infected Goods, or so much thereof as shall be necessary for preventing the spreading of the Infection,

After Quarantain is daily perform'd by any Ship or Persons, and on Proof by the Oaths
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of the Master, and two of the Persons belonging to such Ship; or on Proof by the Oaths of two credible Witnesses before the Customer, Comptroller, or Collector of the Port where such Quarantain shall be perform'd, or the next Port thereto, or before any of their Deputies, or any Justice of Peace living near to such Port, &c. That such Ship and all such Persons have duly performed Quarantain, and that the Ship and Persons are free from Infection; then such Customer, Collector, &c. shall give a Certificate thereof, and thereupon such Ship and Persons shall be liable to no further Restraint.

All Goods after the Quarantain is perform'd, shall be opened and aired, in such Places, for such Time, and in such Manner, as shall be directed by his Majesty, by Order made and notified as aforesaid; and after such Order shall have been duly complied with, and Proof shall be made thereof by the Oaths of two or more Witnesses, before the Customer, &c. of the Port lying next to the Place where the Goods shall be carried, or any Deputy, and one Justice, &c. upon Certificate by such Customer, &c. to the Commissioners of the Customs in *Great-Britain* or *Ireland*, such Goods shall be forthwith discharged, by Order of any two of the said Commissioners, &c.

And if any Officer shall demand more than is hereby allow'd for any such Oath, Certificate and Order, he shall forfeit 100*l.* one Moiety to the Crown, the other to him who will sue for the same by Action of Debt.

The 8 *Geo.* 1. *cap.* 8. declared it lawful for the King, by one or more Proclamations to
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be issued before such a Time, to prohibit all Persons to go to any Kingdom or Place, which shall be infected with the Plague; and to export out of *Great-Britain* and *Ireland*, or any the Dominions thereunto belonging to any Place infected, to be specified in such Proclamation, any Goods or Commodities whatsoever; or to import any Goods or Commodities, from any such Country or Place.

All Goods, Wares and Merchandize, exported or shipped for Exportation, contrary to the Meaning of such Proclamation, and of this Act, and the Vessels on which they shall be so exported or shipped, with the Tackle, Furniture and Apparel thereof, shall be forfeited, and may be seized where-ever found; and such Seizures may be sued for and recovered by the same Means, Rules, and Remedies, and in the like Manner, as any Goods seized for unlawful Importation or Exportation may be sued for, &c. and every Person who shall have exported, or shipped for Exportation any such Goods or Commodities, shall forfeit double the Value, to be ascertained and recovered as the Value of uncustomed or prohibited Goods is by Law to be ascertained and recovered: Also every Person that shall have procured such Goods to be imported, shall forfeit treble Value, &c. Besides other Pains and Penalties. Two Third Parts of the said Forfeitures, shall be to the Use of the Crown, the Charges of Prosecution and Recovery being born by his Majesty, and the other Third to the Use of him as shall seize, inform or sue for the same.

If at any Time after the issuing such Proclamation as aforesaid, any Person shall go to any Country or Place infected, contrary to the Meaning of the Proclamation, and of this Act, he shall incur a *Præmunire*.

By the 8 *Geo. 1. cap. 10.* certain Clauses in the Act 7 *Geo. 1. cap. 3.* which gave Power to remove Persons infected here with the Plague, to Ships, Lazarets, or other Places; and to make Lines or Trenches about any City, Town or Place infected; with all Powers in the said Act, to compel any Persons to remove from their Habitations, to any Ship, Lazaret, &c. are hereby repealed and made void: So that nothing herein shall be construed to repeal any of the Powers or Penalties in the said Act relating to Persons who shall be on Board any Ship obliged to do Quarantain, or shall come on Shore, or go on Board any other Ship from any Ship that is obliged to perform Quarantain.

But by the Statute 1 *Geo. 2. cap. 13.* for the performing of Quarantain, it is enacted; that when any Country shall be infected, it shall be lawful for his Majesty to order Ships to be provided, or Houses or Lazarets for the receiving and entertaining of Persons obliged to perform Quarantain, during such Time as they shall continue infected, or 'till they have performed such Quarantain; and also Sheds, Tents, and other Places proper for the depositing, opening and airing of Goods and Merchandizes, to be provided and erected, to continue for such Time as his Majesty shall think fit and direct, in convenient Places within any Part of *Great-Britain or Ireland*, to be allowed
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and approved by two or more Justices of the Peace for the County, &c. where the same lie, living near thereto, under their Hands and Seals, in any waste Grounds or Commons; or where such Wastes are not sufficient, in the several Grounds of any Persons, not being a Garden, Orchard, Yard, &c. paying such Rate, Rent, or other Consideration as shall be agreed on, or assessed and adjudged by the Justices of Peace at their General Quarter Sessions.

The proper Officers, authorized to put in Execution the Orders made by his Majesty in Council, and notified by Proclamation, shall compel all Persons obliged to perform Quarantain, and all Goods and Merchandizes comprized within such Orders, to repair or be conveyed to some of the Ships, Houses, or Lazarets, Sheds, Tents, or other Places, provided as before mentioned: And if any Person obliged to do Quarantain, shall wilfully refuse or neglect to repair, within convenient Time after due Notice given him by the proper Officer, to the Ship, House, Lazaret, or other Place duly appointed for him; or having been placed in such Ship, &c. shall escape out of the same, before Quarantain fully performed, or attempt it, in such Case the Watchmen, and other Persons appointed to see Quarantain performed, by any Kind of Violence that the Case shall require, may compel every such Person to return into such Ship, &c. and on their Refusal so to do, or actually escaping, &c. shall be adjudged guilty of Felony, and suffer Death, without Benefit of Clergy.

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If any Person not infected with the Plague, nor liable to perform Quarantain, shall presume to enter any Ship, House, Lazaret, &c. so appointed as aforesaid, while any Persons infected, or under Quarantain, shall be therein, and shall return, or attempt to return from thence, unless in such Cases, and by Licence, as shall be directed by any Orders so made and notified, it shall be lawful for the Watchmen or other Persons having the Guard of such Ship, &c. by any Kind of Violence, to compel such Person to repair to some Ship, Lazaret, &c. there to continue and perform Quarantain: And if such Person shall escape out of such Ship, &c. before he shall have performed the same, he shall be guilty of Felony, without Benefit of Clergy.

And if any Officer, or other Person appointed to see the Quarantain performed, or any Watchman placed on any House, Lazaret, Ship, or other Place, for Performance of Quarantain, shall knowingly and willingly suffer any Person, Ship, Goods or Merchandizes to depart or be removed from thence, unless in such Cases, and by such Licence as shall be directed by some Order made and notified by Proclamation, every such Offender shall be adjudged guilty of Felony, and suffer Death without Benefit of Clergy. But no Attainder of Felony, by Virtue of this Act, shall work any Corruption of Blood, or Forfeiture of Goods, Chattles or Hereditaments.

There is a Clause in this Statute, that whereas Cotton, Skins, Human Hair, and certain other Species of Merchandizes are more especially liable to retain Infection, and may
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be brought from Places infected into other Countries, and thence imported into his Majesty's Dominions in Ships not obliged to perform Quarantain: Therefore, when any foreign Country shall be infected with the Plague, all such Goods and Merchandizes, as shall be particularly specified in any Order to be made concerning Quarantain, and notified as aforesaid, which shall be imported in any Part of his Majesty's Dominions, from any foreign Country, and in any Ship whatsoever, shall be liable to such Order so made.

By 6 *Geo. 2. cap. 34.* such Parts of the Act 1 *Geo. 2. cap. 13.* as were to continue in Force for two Years only, shall be revived, and continue for a longer Time. And it shall be lawful for the King's Majesty by Proclamation, to prohibit all Persons to go from *Great-Britain* or *Ireland*, or the Isles of *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, unto any Place which shall be infected with the Plague, to be mentioned in such Proclamation, during the Time therein specified, and under such Regulations as in the Proclamation shall be prescribed: Also it shall be lawful for his Majesty, by Proclamation to prohibit all Persons to come from any Place infected with the Plague, specified in such Proclamation, into *Great-Britain* or *Ireland*, &c. under the Regulations prescribed in any such Proclamation. And all Persons who shall export Goods contrary to the King's Proclamation, shall forfeit double the Value.

If after the issuing such Proclamations aforesaid, any Person shall go to any Place infected, contrary thereto, the Person offending shall forfeit 500 *l.* one Moiety to his Majesty, and
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the other to him who sues for the same; and if any Person coming from any Place infected, shall enter into, or any Goods shall be landed out of any Ship in any Place in *Great-Britain* or *Ireland*, &c. contrary to such Proclamation, the Persons offending therein shall be guilty of Felony, and suffer Death without Benefit of Clergy; and such Ship or Goods shall be forfeited to his Majesty: And all Persons, who after Proclamation, shall cause any such Goods to be imported, shall forfeit treble Value; to be ascertained and recovered, as the Value of any uncustomed Goods is by Law to be ascertained; two third Parts whereof shall be to the Use of his Majesty, and the other third Part to the Person prosecuting for the same.

In every Proclamation, to be issued for prohibiting Commerce with any Place infected with the Plague, a reasonable Time shall be allowed, before the Prohibition declared by such Proclamation shall commence; Regard being had to the Distance of the infected Places from *Great-Britain*, *Ireland*, or any of the Isles aforesaid, and to the Time within which Notice of such Proclamation may arrive at such infected Places.

If any Action or Suit shall be commenced against any Person for any Thing done in pursuance of this Act, the Defendant may plead the General Issue; and if Judgment shall be given against the Plaintiff, the Defendant shall recover treble Costs.

Pressing and Arresting Ships, see Admiralty, &c.

C H A P. X.

Of Letters of Marque and Reprisal, granted on Depredations committed, and of Restitution, &c.

L E T T E R S of Marque are extraordinary Reprisals or Commissions for Reparation to Merchants taken and despoil'd by Strangers at Sea: And Reprisals is the retaking, or taking again of one Thing for another.

The Goods of others may be taken upon the Sea, by Letters of Marque and *Jus Reprisaliarum*; but the same cannot be done by any private Authority, only by the Power of that Prince or State, whose Subject the injur'd Person is; nor is it grantable by Authority, but where the Party damaged has Justice deny'd him, or the same is illegally delay'd: This Law or Custom of Reprisals was constituted and establish'd by the Consent of Nations, and without it, Licence would be given and tolerated for the committing of *Depredations*; especially if only the Goods of Rulers were made liable, who seldom possess any Thing that the Injur'd can come at for Satisfaction.

But Princes by the Laws of Nations, are answerable for Injuries publick, and should by the most prudent Ways imaginable prevent those that are private; not suffering Foreigners, if possible, to receive Wrongs in their Countries: Nor should the Prince of the Person in-

jur'd, value his Misfortune at so lowe a Rate, as to deny him Letters of Request for Satisfaction ; and if Justice be deny'd after such Request, it is reasonable to arm him with Power, to take Satisfaction by Reprize and Military Force. And there are usually sent two or three Letters of Request, according the Satisfaction return'd in Answer, before the Reprizal is awarded ; and such Letters generally assign a Time certain for Damages to be repair'd, if not, Reprisals to issue forth.

King *Charles I.* after the Massacre at *Ambonyna*, granted Letters of Request to the States of *Holland* for Satisfaction within eight Months ; otherwise Letters of Reprisal were to follow. King *Charles II.* on the Petition of Mess. *Goulor* and *Canbam*, granted one *Lee* Letters of Request to the Great Duke of *Tuscany*, for Redress against the Government of *Leghorn*. In the Year 1674, the same Prince issued out Letters of Request to the King of *Spain*, requiring Satisfaction for the Depredation committed on the Ship and Goods of Mr. *Stampe*, who was robb'd and murder'd at the *Havanna*. He also publish'd a Proclamation in the following Year, promising a Reward for apprehending the Offenders dead and alive.

In the Prosecution of Letters of Request and Reprisal, there must be, 1. The Oath of the Party injur'd, or other sufficient Proof, touching the pretended Injury, and of the certain Loss and Damage thereby sustained. 2. A Proof of due Prosecution or Solicitation for obtaining Satisfaction in a legal Way. 3. The deferring or Denial of Justice. 4. A Complaint

to his own Prince or State. 5. Requisition of Justice by him or them, made to the supreme Head or State, where Justice in the ordinary Course was deny'd. 6. Persistency still in the Denial of Justice. And after all which, Letters of Reprisal under such Cautions, Restrictions and Limitations as are consonant to Law, and as the Special Case requires, may issue not only by the Civil, but by the ancient Municipal Laws of this Kingdom: And then the Prince of that Country, against whom the same are awarded, must repair the Damage out of his or their Effects, who committed the Injuries; or if that proves deficient, it ought to fall as a common Debt on his Country.

The Reprisals grantable by the Laws of *England* are of two Sorts, ordinary and extraordinary: The ordinary Reprisals are either within the Realm, or without the same; and the first are grantable where any *English* Merchants have suffered in their Persons or Goods, and their Merchandizes are spoil'd or taken from them in Parts beyond the Seas, by Merchants Strangers, and the *English* Merchants upon Suit, or the King's demanding of Justice by his Embassadors, &c. cannot obtain Satisfaction to the Persons injur'd; then the Parties proving they have prosecuted the Offenders in a due Course of Justice, and have been deny'd or delay'd illegally to have Right done them, shall in such Case have a Writ out of *Chancery* to arrest the Merchant Strangers of that Nation, or their Goods here in *England*. And the Lord Chancellor, in this Case, has always the Approbation of the King or Council, or both, for so doing.

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The other Reprisals without the Realm, are always by Patent, under the Great Seal, and cannot be ordinarily revoked; because, after the Person injur'd has petition'd, and according to Law proved his Loss, obtained Letters of Request, and no Reparation has been made: As soon as the Letters Patent are sealed, the same does immediately create and vest a National Debt in the Grantee, to be satisfied in such Manner, and by such Means as the said Letters Patent direct, out of the Goods and Estates of that Prince's Subjects, who refus'd, or illegally delay'd Justice. But if the supreme Power thinks the Execution of these Letters of Reprisal, cannot well be effected without endangering the Peace of both States, it may be respited 'till a more convenient Time: And Princes are careful in granting such Letters Patents, to have them made so as they may not be reckon'd a Breach of the Peace; but the granting of them for particular Satisfaction, does not in the ordinary Way amount to a Breach. Where such Letters of Reprisal have been revok'd, will be shewn hereafter.

As to the extraordinary Reprisals, they are by Letters of Marque, for Reparation at Sea, or any Place out of the Kingdom, granted by the Secretaries of State, with the like Approbation of the King and Council; but they are only during the King's Pleasure, and generally in Time of War, so that they may at any Time be revok'd.

In King *Henry* the IVth's Reign, on the grievous Complaint of the Commons of *England*, who had suffered many Wrongs and In-

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juries in the Loss of their Ships and Goods upon the main Sea, contrary to Leagues, &c. which were broken by the Subjects of other Nations; and reciting the Willingness of the Parliament to provide Remedy and Relief for the grieved, by Spoil and Injuries done unto them, &c. a Law was made by which 'tis enacted, that upon Application to the Keeper of the Privy Seal, he shall sign Letters of Request to demand Restitution and Reparation to the Parties grieved; which, if not made in convenient Time, then the Lord Chancellor of *England* shall grant Letters of Reprisal in due Form of Law, to obtain the same by Force, and for the Indemnity of the Persons interested and injured: And this is confirmed by Stat. 4 *Hen. 5. cap. 7.* and other Statutes.

But Letters of Reprisal were granted long before these Statutes, by the Kings of *England*, by Virtue of their Prerogatives; nor was the King's Prerogative in the least diminished by them, but remained at the Common Law, to judge when it was expedient to grant them; and the before mentioned Act of King *Hen. IV.* notwithstanding it ordains Letters of Request and of Reprisal, doth not restrain the King's Prerogative therein.

The Cases where Reprisals will or will not lie, are thus stated: On wrong Judgment given in a Prosecution abroad, in Matters not doubtful, which might have been redress'd, either by the ordinary or extraordinary Power of the Country or Place, and the which was apparently perverted or deny'd, Reprisal may be granted: Though if the Matter be doubtful,
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it is otherwise; for in Causes dubious, there is Presumption that Justice was truly administered. If an *Englishman* prosecutes a Person in any legal Court beyond the Seas, whereupon the Military Governor opposes the Suit, and by his Means the Debtor and his Goods are convey'd away, but a Sentence or Judgment is obtained: By this the Execution is frustrated, and Letters of Reprisal shall be had.

And yet if a Merchant of *England* shall commence a Suit in the Courts of Law, beyond the Seas, and Judgment passes against him, from which he appeals to the supreme Court, and there the first Judgment is confirm'd and allow'd; tho' the Complainant hath receiv'd a Judgment contrary to the Right of the Cause, here he shall not have Letters of Reprisal; but it may in an extraordinary Case, if there be strong Circumstances for the same, occasion Letters of Request to have a Rehearing.

If any Person shall be kill'd, wounded, or any was damag'd in a hostile Manner, in the Territories or Places of any King or Potentate, to whom Letters of Request are transmitted, and no Satisfaction shall be made to the Person injured, there is no Compulsion to resort to the ordinary Prosecution, but Letters of Reprisal shall be issued: But where Misfortunes happen to Persons, or their Goods, residing in a foreign Country in Time of War, Reprisals are not to be granted; in this Case, they must be contented to sit down under the Loss, for they are at their Liberty to relinquish the Place on the Approach of the Enemy, when they foresee the Country is sub-

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ject to Spoil and Devastation; and if they
continue, they must partake of the common
Calamity.

It is not the Place of any Man's Nativity,
but of his Habitation, that subjects him to
reprise; for the Law doth not consider so
much where he was born, as where he lives;
Therefore if Letters of Reprisal should be
awarded against the Subjects of the Duke of
Tuscany, and a Native of *Florence*, but deni-
zen'd or living in *England*, should have a
Ship on a Voyage for *Leghorn*, if in such Case
a Caption be made of this Ship, it is not law-
ful, nor can the same be made Prize. And
there are certain Persons, as well as Ships and
Goods, that are exempted or privileged from
Reprisals; such as Embassadors and their Re-
tinue, coming from him who awarded the
Reprise; Travellers through a Country, stay-
ing but a little while there; ecclesiastical
Persons, &c. And a Merchant of another
Place than against which Reprisals are grant-
ed, altho' the Factor of his Goods were of
that Place, is not subject to Reprisals. *Molloy*
Jur. Marit. 21.

Where Ships are driven into Port by Storm
or Strefs of Weather, they have an Exemp-
tion from the Law of Reprisals, according to
common Right; but by the Laws of *England*
it is said to be otherwise, unless expressly pro-
vided for in the Writ or Commission: And if
such Ship flies from his own Country to avoid
Confiscation, or for some other Fault, and is
driven in by Strefs of Weather, she may then
become subject to be Prize. But it is unlaw-
ful to make Seizure of Ships for Reprisal in
any

any Ports, but in that Prince's who awarded the Reprisals, or his against whom the same are issued; the Ports of other Princes or States, are not to be disturb'd, but be peaceably maintained.

If a Ship having Letters of Marque or Reprisal, shall take the Ships and Goods of that Nation against whom they are awarded, and bring the same into a Neuter Port, the Owners may there claim and seize her; or the Admiral may make Restitution according to Law, of the Ships Goods to the Owners, and the Captives to their Liberty; for that the same ought first to have been brought *infra presidia* of that Prince or State, by whose Subjects they were taken: And if it be not so done, it has been resolved, that such Ships cannot become lawful Prize, nor are the Owners of such a Caption divested of their Property. *Trin. 17 Car. 1. in B. R. Marsh's Rep.*

When any Ship that hath Letters of Reprise, attacks a Vessel, and she refuses to yield, she may be assaulted and entered; and if it falls out, that by Accident some of those which make Resistance are slain, the Fault will be at their own Doors, for hindering the Execution of what is legal and granted by Authority. But in Case a Letter of Marque shall wilfully and knowingly take a Ship and Goods belonging to another Nation, against whom the Commission is not awarded, but of some other State in Amity, this amounts to downright Piracy; whereupon the Offenders will incur a Forfeiture of their Vessel, &c. *Rol. Abr. 530.*

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Though if such Letters of Marque be assign'd over to another Person, who takes any such Ship or Goods of another Nation, on a violent Presumption that it belong'd to the Right of him, against whom Reprisals are granted; here, if the Sufferers recover their Goods and Ship, yet the Captors are not to be punished criminally, nor the Grantees of the Letters Patent civilly. The Captors nevertheless may not be excused from answering the Damages; but the Grantees are excuseable both as to that and Punishment, unless they are privy to the Caption: It is like unto the Case of an Officer arresting a wrong Person; he is liable to answer the Damage to the Party arrested, but not the Person that employed him. Stat. 4 Hen. 5. cap. 14. *Sea Laws* 470.

A Person who had Letters of Marque in the *Dutch War*, took an *Ostender* instead of a *Dutch Ship*, and brought her into Harbour; and was prosecuted for Damages, &c. And one *Broom*, by Letters of Marque, &c. under others, having taken a *French Ship* at Sea, he carried the same into *Africa*, and the Admiralty there condemn'd her as Prize; afterwards he sold her, and applied the Money to his own Use, and then coming into *England*, he was sued in the Admiralty to give an Account, and Sentence was given against him; tho' he appealed for a Prohibition, but it was denied. 1 *Lev.* 243. 1 *Salk.* 32.

A Ship being lawfully taken, and brought into Port, the Captor must exhibit all his Ship-Papers, and Captive Mariners to be examin'd, in Order to Adjudication; 'till when,
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and the Goods are legally condemn'd, Bulk ought not to be broken, nor may the Captain permit an Imbezilment of the Lading, or sell, barter, or dispose of any Part, without Commission; for the King hath a Proportion in all Prizes: And the common Profits of Prizes, are to be equally divided among all the Ships present, and not be solely to the Captor; so that if Letters of Reprisal are granted to two Ships, and they happen both of them at Sea to meet a Prize, and the one attacks, and enters her, by Means whereof she becomes Conqueror; although the other did nothing in the Engagement, he hath Right to an equal Distribution with the Captor, because the Presence of the other Vessel, arm'd and prepar'd for Battle, becomes a Terror, and will occasion a Ship the sooner to yield.

3 *Eliz. cap. 5.* 2 *Leon. Rep.* 182.

If the Caption of any Ship or Goods be by Men of War, the Property will immediately be in the Captors; except it be lost again, and the Ship or Goods are recover'd by the Persons from whom they were taken, or be in Battle regain'd. And by the Law of Nations, the Dominion of the Things taken by those to whom Letters of Marque are granted, become the Captors, 'till the Debt and Costs, that is the original Damage and subsequent Charges are satisfied; which being done, the Residue ought to be restored: And so the *Venetians* used their Equity, having taken the Ships of *Genoa*, they did not spoil any of the Lading, but preserved the same very carefully, until the Debt was paid; and then

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then they made Reſtitution of the Things entirely, without Diminution. *Molloy* 23.

In Caſe the King of *England* ſhould be in Enmity with the States of *Holland*, and one of their Ships of War takes an *Engliſh* Merchant-Man, and afterwards another Ship of War of *England* meets the *Dutch* Ship and his Prize, and regains the ſame; there Reſtitution is commonly made, the Owners paying the Salvage: So where the Prize is recover'd by a Friend in Amity, or comes into his Ports, Reſtitution is to be made. And the taking of Ships and Goods by Force and Arms, is ſo odious, that if by any Poſſibility, the right Owners may have Reſtitution, the ſame hath been granted. *Ibid.* 6, 7.

Where for the Fault perhaps of a few, a Debt becomes National; the Goods of the guiltleſs and innocent become liable (if taken) for Satisfaction, but ſuch Party ought to have Contribution by the Law of *England*, as when one is put to the whole Burden, and more are bound to do one Thing. Though when Depredations have happened here to foreign Merchants, and Complaint hath been made concerning them, our Kings have often iſſued Commiſſions to enquire of the ſame, and award Satisfaction: And upon the Petition of ſome Merchants of *Genoa*, who complain'd againſt the Inhabitants of the Iſle of *Guernſey*, for a Depredation, in taking away and detaining their Merchandize and Goods, to a very conſiderable Value, out of a Ship wreck'd by Tempeſt near the ſaid Iſle; on this a Commiſſion was granted, by which the Commiſſioners were impower'd to puniſh the Offenders,

Offenders, and make Restitution and Satisfaction for the Damages sustained. For as the *English* Subjects may have their Goods by way of Reprize, for the Satisfaction of a Debt from Foreigners; so they may have the Benefit of these Commissions, to make themselves whole out of the States of the Offenders. *Pat. 26. Ed. 3. see Stat. 31 Hen. 6. cap. 4.*

But he that will sue to have Restitution in *England* for Goods taken at Sea, must prove that the Sovereign of the Party was in Amity with the King of *England*, &c. and Letters of Reprizal make no War, or Enmity between Nations. 22 *E. 3.*

A Copy of Letters Patent for especial Reprizals from the King of Great Britain (under the Great Seal of England) against the States of Holland and their Subjects, Inrolled in the High Court of Chancery 19 May, 15 Car. 2.

CHARLES the Second, &c. *Whereas* our loving Subjects Sir *William Courteen* Kt. deceased; and his Partners, Anno 1643, by the Depredation and Hostile Act of one *Gailand*, Commander in Chief of two Ships belonging to the *East-India* Company of the *Netherlands*, was between *Goa* and *Maccas* in the *Straits of Malacca*, deprived and most injuriously spoiled of a certain Ship called the *Bona Esperanza*, and of her Tackle, Apparel, and Furniture, and all the Goods and Lading in her, upon a very hopeful trading Voyage to *China*, which were carried to *Batavia*, and there all *de facto*, without due Process of Law, confiscated; and also in the same Year, another

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ther laden Ship of our said Subject, called the *Henry Bonadventure*, being come on Ground near the Island of *Mauritius*, was there, both Ship and Goods, seized upon by some of the Officers and Ministers, and others under the Command of the said *East-India* Company, and utterly detained from the right Owners. And whereas the said Sir *William Courteen* and his Assigns, in his Life-time, used all possible Endeavours to recover the said Ships and Goods, and to procure further Justice against the Malefactors, and yet could obtain no Restitution or Satisfaction; whereby they came to be much distressed, and utterly undone in their Estate and Credit: And thereupon, and upon the most humble Supplication and Adresses of *Francis* Earl of *Shrewsbury*, and *William Courteen*, Esq; Grandson and Heir of the said Sir *William* deceased, Sir *John Ayton* and Sir *William Turner*, Knts. and *George Carew* and *Charles Whitaker* Esqrs. (on the Behalf of themselves and divers others Interested in the saids two Ships, *Bona Esperenza* and *Henry Bonadventure*, and in the Estates of the said Sir *William Courteen*, deceased) Sir *Edward Littleton*, Bart. and Sir *Paul Pindar*, Knt. that we would take their Case into princely Consideration. We out of a just Sense we then had, and still have of their unjust Sufferings in that Business, both by our own Letters, under our Sign Manual, to the States General of the *United Provinces*, and by Sir *George Downing*, Knt. and Bart. our Envoy Extraordinary, to whom we gave special Command so to do, required Satisfaction to be made, according to the Rules of Justice, and the Amity and

and good Correspondence which we then desired to conserve with them firm and inviolable. **And whereas** after several Addresses made to the States General by our said Envoy, and nothing granted Effectual for Relief of our said Subjects, (whom we take ourselves in Honour and Justice concerned to see satisfied and repaid) We lately commanded the said Sir *George Downing* to intimate and signify to the said States, that we expected their final Answer, concerning Satisfaction to be made for the said Ships and Goods, by a Time then prefixed, and since elaps'd; that we might so govern ourselves thereupon, that our aforesaid Subjects might be relieved according to Right and Justice, and yet no Satisfactory Answer hath been given; so that we cannot but apprehend it to be, not only a fruitless Endeavour, but a prostituting of our Honour and Dignity to make farther Application, after so many Denials and Slightings. **And whereas** *John Exton*, Doctor of Laws, Judge of our High Admiralty Court of *England*, upon our Command to certify to us the Value of the Losses and Damages sustained by the said Sir *William Courteen* and Partners, whose Interest is now vested in our loving Subjects Sir *Edmund Turner*, Knt. and *George Carew*, Esq; and Partners, hath upon full Examination and Proof thereof made by Witnesses in our High Court of Admiralty, reported and certified under his Hand, that the same do amount to the Sum of one hundred fifty one thousand, six hundred and twelve Pounds.

Now Know ye, That for a full Restitution to be made to them for their Ships, Goods and

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and Merchandizes, of which the ſaid Sir *William Courteen*, Knt. and Partners, were ſo diſpoiled as aforeſaid, with all ſuch Coſts and Charges as they ſhall be at for the Recovery of the ſame: We by the Advice of our Privy Council have thought fit, and by theſe Preſents do grant Licence and Authority, under our Great Seal of *England*, unto our ſaid Subjects, Sir *Edmund Turner* and *George Carew*, their Executors, Adminiſtrators and Aſſigns, for and on the Behalf of themſelves, and other Perſons intereſted, as aforeſaid, to equip, victual, furniſh, and to ſet to Sea from Time to Time, ſuch and ſo many Ships and Pinnaces as they ſhall think fit; provided always that there be an Entry made and recorded in the Admiralty Courts, of the Names of all Ships and Veſſels, and of their Burden and Ammunition, and for how long Time they are Victualled, and alſo the Names of the Commanders thereof, before the ſame or any of them be ſet forth to Sea; and with the ſaid Ships and Pinnaces by Force of Arms to ſet upon, take and apprehend any of the Ships, Goods, Money, and Merchandizes belonging to the States General, or any of the Subjects inhabiting within any of their Dominions or Territories, whereſoever the ſame ſhall be found, and not in any Port or Harbour in *England* or *Ireland*, unleſs it be the Ships and Goods of the Parties that did the wrong. And the ſaid Ships, Goods, Money and Merchandizes, being ſo taken, and brought into ſome Port of our Realms and Dominions, an Inventory thereof ſhall be taken by Authority of our Court of Admiralty, by the Judge or Judges thereof for
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the Time being, upon Proofs made before him or them, that the said Ships, Goods, Wares, Merchandizes or Money, did belong to the States General, or any of their Subjects as aforesaid: That they shall be lawful Prize to the said Sir *Edmund Turner* and *George Carew*, their Executors, Administrators and Assigns, as aforesaid, to retain and keep in their or any of their Possessions, and to make Sale and dispose thereof in open Market, or howsoever else, to their and every of their best Advantage and Benefit, in as ample Manner as at any Time heretofore hath been accustomed by way of Reprizal; and to have and enjoy the same as lawful Prize, and as their own proper Goods: So that neither any Captain, Master, nor any of their Company, that shall serve in Person, or shall promote and advance the said Enterprize in Manner and Form aforesaid, shall in any Manner of Wise be reputed or challenged as an Offender against any of our Laws. And that it shall be lawful for all Manner of Persons, as well our Subjects as any others, to buy the said Ships, Goods and Merchandizes so taken and apprehended by the said Captains, Masters, and others, and adjudged as aforesaid, without any Damage, Loss, Hindrance, Trouble, Molestation, or Incumbrance to befall the said Buyers, or any of them, in as ample and lawful Manner, as if the Ships, Goods, Wares, and Merchandizes, had been come and gotten by lawful Traffick of Merchants, or of just Prizes in Time of open War. **Provided** always, that all Ships, Goods and Merchandize, taken by Virtue of this our Commission, shall be kept

in Safety, and no Part of them wasted, spoil'd, or diminish'd, or the Bulk thereof broken, until Judgment hath first pass'd as aforesaid, that they are the Ships and Merchandize of the States General, or some of their Subjects as aforesaid: And if by Colour of this our Commission, there shall be taken any Ships, Goods, or Merchandizes of any of our loving Subjects or the Subjects of any Prince or State in good League or Amity with us, (except the States General, or their Subjects as aforesaid) and the Goods therein laden, sold and imbezil'd or diminish'd, or the Bulk thereof broken in any Place, before they shall be adjudg'd to belong to the States General, or some of their Subjects as aforesaid; that then this Commission shall not be of sufficient Authority to take the said Ships, Goods and Merchandizes, or to warrant or save harmless such as shall receive, buy, or intermeddle therein, but that both the Prizes so taken, and the said Ships of War, shall be confiscated to our Use.

And further, we do hereby declare, That it is our Will and Pleasure, that this our Commission shall remain in full Force and Power, to all Intents and Purposes, until the said Sir *Edmund Turner* and *George Carew*, their Executors, Administrators and Assigns, as aforesaid, shall by Virtue thereof, have by Force of Arms apprehended, taken, seized, recovered, and received from the said States General, or their Subjects, One hundred fifty one thousand six hundred and twelve pounds, according to the Appraisement to be made by Appraisers upon Oath, nominated and authorized in our said Court of Admiralty, of such Ships, Goods,
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Wares,

Wares, or Merchandizes, as shall be taken from the said States General, or any of their Subjects, by Virtue of this Commission, or shall otherwise receive Satisfaction of the Debt aforesaid, by Composition to be made between those of the *East-India* Company of the *Netherlands*, and the said Sir *Edmund Turner* and *George Carew*, their Executors, Administrators and Assigns as aforesaid: Notwithstanding the present Difference between us and the said States General, depending upon general Reprizes, may be agreed and compos'd; and that in the Interim a good Correspondence may be renewed between us and the said States General. In which Case nevertheless, it is our Will and Pleasure, that in the Execution of this our Commission, no Violence shall be done to the Persons of the said Subjects of the said States General, but only in Case of Resistance; and that after in cold Blood, the Subjects of the States General, if hurt or wounded, shall be used with all convenient Offices of Humanity and Kindness, &c.

A Proclamation for Revoking the foregoing Letters of Marque and Reprisals, publish'd August 30, 1680.

WHEREAS *George Carew*, Esq; had formerly granted to him Letters of Marque against the States General of the United Provinces, for Satisfaction of a certain Demand which Sir *William Courteen* and others, had against the said States, and to which the said *George Carew* was intitled; which said Demand, has since by Treaty of Peace between his Majesty

and the said States, been totally abolish'd and extinguish'd, and all Letters of Marque and Reprizal by the same Treaty discharged accordingly. And whereas his Majesty has since recalled and superseded the said Letters of Marque: To the End, that no Person may be misled, under Pretence of any Letters of Marque and Reprizal heretofore granted to the said *George Carew*, and thereby incur the Danger of the Law, as Pyrates; his Majesty is pleased, by this his Proclamation, to declare, That the said *George Carew* has now no Authority and Commission, by Virtue of any such Letters of Marque, to equip or set out any Vessel whatsoever, and that all Persons that shall presume to be aiding to him in setting forth any such Ship, or serve under him by Colour of any such pretended Authority, shall be proceeded against as Pyrates, according to the utmost Severity of the Law.

C H A P. XI.

Of Privateers and Capers, and of Prizes.

A Privateer, is a kind of a private Man of War, tho' the Commission be not so Honourable; and these in *Holland* are term'd Capers: The Use of them is not very ancient, and some Persons account those but one remove from Pyrates; who, without any respect to the Cause,

Cause, or having any immediate Injury done them, or not being so much as hired for the Service, spoil Men and Goods and innocent Traders, making a Trade and Calling of it, amidst the Calamities of a War.

But that Privateers in general are lawful, when under right Conduct, there is no Room to Question; for if a War be enter'd into on a just Foundation, they cannot be unjust: All Ways of bringing an Enemy to Reason, which are not against the Laws of Nations, are allowed; and 'tis no Matter whether a Person so commissioned is paid by the Prince, or content to pay himself out of the spoils of the Enemy; or if he acts for no Pay at all, but out of Love to his Country and Loyalty to his Prince.

It has therefore been Customary, since the Trade of *Europe* hath been so great and important, for Princes and States, in Case of a Rupture with other Princes, to issue forth Commissions to private Men, to equip Ships of War; and the Persons concerned in Privateers, administer at their own Costs a Part of a War, by providing Ships of Force, and all other Military Utensils, to endamage the Enemy; and they have instead of Pay, Leave granted to keep what they can take from an Enemy, allowing the Admiral his Share, &c. Then besides the common private Commissions, there is mention of special Commissions granted to Persons that take Pay, who are under Discipline; and if they do not obey Orders, may be punish'd with Death. And the Wars in latter Ages, have generally given Occasion for the issuing Commissions to annoy the Enemies

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mies in their Commerce, and hinder such Supplies as might strengthen them, or lengthen out the War; and likewise to prevent the Separation of Ships of greater Force, from their Fleets or Squadrons.

By a Law made in the 6th Year of *Queen Anne*, the Lord High Admiral, or Commissioners of the Admiralty, during the War, were empower'd to grant Commissions to Commanders of *British* Ships, (on their giving Security as usual upon granting such Commissions, except for Payment of the Tenths to the Lord Admiral) for the seizing and taking Ships and Goods belonging to Enemies in any Sea or River in *America*, &c. And Persons serving on board Privateers, &c. are not to be impress'd by any Ship of War, under 20*l.* Penalty.

Privateers may not attempt any Thing against the Laws of Nations; as to assault an Enemy in a Port or Haven, under the Protection of any Prince or Republick, be he Friend, Ally, or Neuter; for the Peace of such Places must be kept inviolably. And when these private Commissions are granted, there is always great Care to be had and taken by Caution, to preserve the Leagues of our Allies, Neuters and Friends, according to their various and several Treaties; and therefore by a Marine Treaty between King *Charles* the Second, and the States of *Holland*, made at *London* in the Year 1674, before a Commission shall be granted to any Privateer or Caper, the Commander is to give Security in 1500*l.* and if such Ships have above One hundred and fifty Men, then in 3000*l.* &c. that they

they will make Satisfaction for all Damages which they shall commit in their Courses at Sea, contrary to Treaties with that State; upon Pain of forfeiting their Commissions, and answering such Damage, for which the Ship is made liable.

And by other Articles in the said Treaty, if Torture, Cruelty, or any barbarous Usage, after a Caption, be done to the Persons taken in the Prize, the same shall discharge such Prize, altho' she was lawful; and the Captains shall lose their Commissions, also both they and the Offenders be subject to Punishment. This Agreement between the *English* and *Dutch*, is fit to be a Standard to all Nations whatsoever; and by the Treaty of *Utrecht* there is an Article with *France* to the same Purpose.

Ships carrying Powder, Shot, Guns, Swords, and other Warlike Instruments and Provisions of Armature for Sea or Land, bound for an Enemy from a neuter Nation, or a State in Amity with both the Warring States, shall be taken as Prize; and so may Money, Victuals, &c. but this must be in a Time of Necessity, when the War is so bad, that a Prince cannot possibly defend himself, or damage the Enemy, without intercepting of such Things. And according to some Treaties, those Goods which may be used out of War, as in War, (except Ships) shall not be called prohibited, nor liable to Condemnation, unless carried to Places besieged: And Goods made Use of for Pleasure and Luxury only, are free and not reckoned among such as are prizable, in neutral Ships. *Molloy Jur. Marit.* 29.

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If Part of the Cargo of a Ship taken by a Privateer be prohibited Goods, and the other Part not prohibited, but such as according to the Necessity of the War shall be so deemed, that may draw on a consequential Condemnation of the Ship as well as Lading. In Case Part of the Lading is prohibited, and the other Part meerly for Pleasure, the Goods prohibited only shall be adjudg'd Prize, and the Ship and the Remainder of the Cargo be discharged; which may proceed in the Voyage, on delivering up the other Goods, without being brought into Port: But if a Ship be wholly laden with contraband Goods, both the Ship and Goods may be made Prize, *Ibid.* 30.

And if any such Ships shall be attack'd in order to be examin'd, on their refusing to submit, they may be assaulted; and if the Persons on board do not surrender themselves, the Ships may be entered by Force, and the Persons resisting be slain. But where a Commander of a Privateer wilfully commits any Spoil on the Ships of Friends or Neuters, or on the Ships of their fellow Subjects, according as the Circumstances of the Crime are more or less heinous, he is liable to Punishment by Death or otherwise, and the Ship to be forfeited. *Trin. 3 Jac. in B. R.*

The Owners of Privateers are not to convert any Part of their Captures to their own Use, until they are condemn'd as Prize: And whether a Ship be Prize or not, shall be try'd in the Admiralty, and no Prohibition shall be granted; as was resolv'd, where in Time of War between us and *Denmark*, a Privateer

Privateer belonging to *Scotland*, took a *Danish* Ship, and she was condemn'd by the Admiralty of *Scotland*, and sold; whereupon a Person suggested in the Admiralty of *England*, that she was not a *Danish* Vessel, but a Ship of *London* which belong'd to an *English* Merchant, and being to dispute the Property, it was insisted could not be tried there: The Court held that the Defendant had no Property but by the Sale, and the only Question was Prize, or no Prize, therefore they would stay nothing, nor award a Prohibition. 2 *Keb. Rep.* 158, 176.

In an Action of Trover for a Ship, Tackle and Furniture, whereof a *Dutchman* born, but a Denizen of *England* was the Owner; it appeared that in the War between *France* and *Holland* she was taken as a *Dutch* Prize, and condemned in the Court of Admiralty in *France*, and there sold to the Plaintiff: After which the Defendant, as Servant to the Owner took her from the Plaintiff to whom she was sold: It was here adjudg'd, that the Sentence of the Admiralty of *France* should not be examin'd in this Action, and the Plaintiff had Judgment. *Raym.* 473.

Our Laws take not much Notice of Privateers; but the Diligence of Enemies, hath Times past obliged us to be also diligent in this Way; and therefore some Acts of Parliament have been made for the Encouragement of Privateers, and ordering of Prizes: As particularly the Statue 4 & 5 *W. & M. cap.* 25. which enacted, That all Vessels with their Ladings, and all Goods and Merchandizes that shall be taken and seiz'd as Prize,

shall be brought into some Port of this Kingdom; and before breaking of Bulk, put into the Possession of the Commissioners of Prizes, or their Agents, who, with two or more Persons, as the Officers or Mariners of the respective Ships shall intrust, and such as shall be appointed by the Commissioners of the Customs, are to preserve the same, 'till they shall be adjudged Prize; except where it shall appear to the Judge of the Admiralty that the Goods are perishable, in which Case Bail shall be taken for them, yet so as to be subject to Sale and Distribution, as is provided by this Act.

After such Goods and Merchandize so taken shall be adjudged Prize, they shall as soon as conveniently it may be done, be sold by the Commissioners for Prizes, &c. in the Presence of Persons intrusted by the Commissioners of the Customs, and the Owners, Officers and Mariners of the Ships of War, publickly by Inch of Candle, Notice being given fourteen Days before, of the Quantity and Quality of the Things to be sold, and of the Time and Place of Sale: And the Proceed of such Sale, after the Custom-Duties are paid and deducted, in Case such Prize were taken by a private Man of War, shall be divided into five Parts; four Parts whereof to be answer'd to the Persons interested in the Privateer, and the fifth to their Majesties; and the Ship, with its Furniture, is to be enjoyed by the Persons interested in the Privateer.

And if the Prize be taken by any of the King's Ships, the neat Proceed shall be divided into three Parts; one Third to be answered

swered to the Commander, Officerss, and Mariners, taking the same, according to the Custom of the Sea for sharing Prizes, &c. (a Third of which is to be distributed among the Ship's Crew) one third Part to be paid to the Treasurer of the Navy, for the Relief of sick and wounded Mariners, and the Widows, Children and impotent Parents of Persons slain at Sea in their Majesties Service; and the other third Part to the Use of their Majesties: And in Case a Prize be taken by any Merchant Ship employ'd in the Service of the Crown, the Proceed thereof shall be divided in like Manner, as Ships taken by Men of War.

If any Persons, who shall take such Prize or Prizes, shall imbezzle or conceal any Part of the Goods or Merchandize, or put the same on Shore in any other Place than their Majesties Warehouses, they shall forfeit their Share of such Goods, upon Proof made of it by one or more Witnesses upon Oath, before the Commissioners of the Customs in the Port of *London*, if the Offence be committed within the said Port, and before the chief Magistrate of the Place, in the Presence of the chief Officer of the Port, in any other Ports; one Moiety whereof to be to the Use of the Informer, and the other to their Majesties. And Seamen and others concerned in Prizes, shall be permitted to see and peruse the Accounts of any Prize.

Where any Ships or Goods shall be taken by any Privateer by Collusion, on Proof made thereof in the Court of Exchequer, or Court of Admiralty, they shall be adjudg'd lawful Prize;

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Prize ; and one Moiety shall be to their Majesties, and the other to him that shall discover the same ; and the Bond given by the Captain of such Privateer is declar'd to be forfeited : And if such Ships or Goods shall be taken by Collusion by any Man of War, the Commander shall forfeit 1000 *l.* also his Command or Employment, and be incapable of any Office under their Majesties during seven Years.

In all Cases, where such Prize shall not be taken by any private Man of War, one tenth Part after Deduction of their Majesties Customs, and before any Division is made of the Proceed thereof, shall be paid to the Treasurer of the Navy, and by him kept apart, to be disposed of by Warrant from the Commissioners of the Admiralty, or Lord High Admiral, for Medals, and other Rewards for Officers and Seamen, who shall do any extraordinary Service. And if any Man of War or Privateer shall take or destroy any *French* Man of War, or Privateer, they shall receive for every Piece of Ordnance in any Ship so taken or destroy'd, 10 *l.* Reward to be paid by the Commissioners for the Prizes, out of their Majesties Share of Prizes.

And if the Commissioners do not pay the same, or give a Bill for it payable out of the first Moneys that shall come to their Hands, within three Days after the same ought to be paid, and Demand thereof made, the said Commissioners shall be incapable to hold any Office in their Majesty's Service for the future. And by another Clause in this Act, if the Commissioners for Prizes, or of the Customs,

stoms, shall detain the Shares belonging to Persons interested in Privateers, two Days after they ought to be paid, &c. free from all Deductions, except for Warehouse Room, and 2 *l. per Cent.* for all other Charges, they shall forfeit double the Sum so detained.

When any Vessel shall be taken as Prize by a Privateer, having no Goods on board of the Growth or Manufacture of *France*, the Persons interested in such Privateer, shall have the whole to their own Use, after Condemnation and Payment of Customs and other Duties, without Deduction for Tenths, or any other Part to their Majesties, or the Lord High Admiral. If any Ship, whereupon Wooll is laden to be transported contrary to Law, be taken by any Privateer, on Proof thereof in the Exchequer, the Persons concerned in the Privateer shall have a Moiety of the Ship and Goods, and their Majesties the other Moiety. But where any Vessel shall be taken within any of their Majesties Ports, Rivers, or Havens, by any Privateer, such Prize shall belong to their Majesties as a Perquisite of the Admiralty of *England*; and the Captors to have only such Part as their Majesties shall think fit to allow, by Way of Encouragement.

If any Ship or Vessel taken as Prize, or any Goods therein, shall appear to belong to any of their Majesties Subjects, continuing under their Protection and Obedience, which were before taken by their Majesties Enemies, and now retaken; such Vessels and Goods, and every Part thereof, shall be restored by Decree of the Court of Admiralty to the former Owners, they paying in lieu
of

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of Salvage, if retaken by a Man of War, an eighth Part of the Value; which shall be answered to the Captains, Officers, and Seamen in the said Man of War, to be divided as in this Act is directed touching the Share of Prizes belonging to them, where such Prizes are taken by any of their Majesties Ships of War: And if taken by a Privateer, or other Ship, after having been in Possession of the Enemy twenty-four Hours, an eighth Part of the Value shall be paid; if above twenty-four Hours, and under forty-eight, a fifth Part; if above forty-eight Hours, and under ninety-six, a third Part; and if above ninety-six Hours, a Moiety; all which Payment to be made without any Deduction. And if such retaken Ship appears to have been set forth by the Enemy as a Man of War, the former Proprietors shall pay the full Moiety of the true Value.

The Lord High Admiral, or Commissioners of the Admiralty, shall express all Things by this Act directed to be observed concerning Prizes, &c. in the Instructions by them to be given to Captains and Commanders of their Majesties Ships of War, and to Commanders of Privateers.

An

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An Order of Council to release Ships, and exempt them from Molestation by Men of War and Privateers.

At the Court at Windsor, August 13, 1705.

P R E S E N T,

The QUEEN's Most Excellent Majesty in Council.

HER Majesty is graciously pleased this Day to order, That all Ships belonging to the Subjects of the *States-General* of the *United Provinces*, which have been taken by any of her Majesty's Ships of War or Privateers, or which are now under Arrest in any of her Majesty's Ports, together with their Loadings, be forthwith released; and that for the future no Ships, having Passes from the said *States-General* to Trade with *France*, be taken or molested in their Voyage by any of her Majesty's said Ships of War, or Privateers: Her Majesty having already open'd the Trade with the Dominions of *Spain*, for the Advantage of her own Subjects. And her Majesty is pleased farther to declare and order, That Instructions be now given for the future to the Commanders of her Majesty's Ships of War and Privateers, not to bring up or molest either the Ships of her own Subjects, or those of the Subjects of the *States-General*, furnished with proper Passes from her Majesty or the said States respectively, so as they do not carry any Goods or Merchandize which
are

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are contraband. And all Commanders of her Majesty's Ships of War, as well as Privateers or Merchant Ships, having Letters of Marque, are to conform themselves hereunto, notwithstanding any Commissions or Instructions heretofore given to the contrary. And for their more particular Direction for the future, his Royal Highness, the Lord High Admiral, is forthwith to order such Instructions to be prepared, as may be proper for the Commanders of Ships of War and Privateers in this Behalf, to be delivered to them as soon as may be.

Christopher Musgrave.

By the Statute 6 *Ann. cap. 37.* for Incouragement of the Trade to *America*, all Prize Offices are suppress'd and taken away; and the Flag, and other Officers and Seamen of every Ship of War, shall have the whole Interest in Ships and Goods they shall take there, (being first adjudg'd Prize in any of the Courts of Admiralty) subject to the Duties to her Majesty for such Goods, and to be divided as her Majesty and Successors shall direct.

The Judge of the Admiralty shall in five Days after Request, finish the preparatory Examinations, in Order to enquire of Prizes, and the usual Monition shall on Request be executed in three Days; and in Case no Claim be made and attested on Oath, giving twenty Days Notice after Execution of such Monition, &c. then the Judge of the Admiralty, upon producing the said Examinations or Copies thereof, and also all Papers and Writings taken in or with the Capture upon Oath, (or Oath that no such Papers were found) shall
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immediately proceed to Sentence, either to acquit or condemn the same.

If Claim shall be made, and Security given by the Claimant to pay double Costs to the Captors in Case the Ship or Goods be adjudg'd Prize, and there shall appear no Occasion to examine Witnesses, other than such as are near the Court; then the Judge shall cause such Witnesses to be examined, and in ten Days after such Claim and Security given, proceed to Sentence. But if it appears doubtful whether it be lawful Prize, and 'tis necessary to have an Examination of Witnesses remote, and if it be desired; the said Judge shall cause the same to be forthwith appraised by Persons named on the Captor's Part, and shall after the Appraisement, and in fourteen Days after Claim, take Security from the Claimants to pay the Captors the Value of the Appraisement, if the same be adjudg'd lawful Prize; and after such Security taken, the Judge shall order the releasing or delivering the same to the Claimants. And in Case any Claimant refuse to give the said Security, the said Judge is to require Security from the Captors, to be approved by the Claimant, to pay the Value of the Appraisement in Case such Capture shall not be adjudg'd Prize; and thereupon the said Judge shall make an Order to release and deliver the same to the Captors or their Agents.

There shall not be paid to the Judge and Officers of the Court of Admiralty, for Condemning of Captures as Prize, above 10*l.* if the Prize be under 100 Tons; nor above 15*l.* if of greater Burthen. And if any Judge or
Officer

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Officer shall delay Proceedings relating to the Condemning, discharging, releasing, or delivering of Prizes, as aforesaid, within the Time limited, or as soon as the same ought to be done by this Act, he shall Forfeit 500 l. one Moiety to the Queen, and the other to the Informer.

The Parties may appeal to her Majesty and Council, so as it be made in fourteen Days after Sentence, and Security be given to Prosecute the Appeal, answer the Condemnation, and pay treble Costs, in Case the Sentence be affirm'd; and so as Execution be not suspended by such Appeal.

By Stat. 9 *Ann. cap. 27.* all Prize Goods and Merchandizes taken by Ships of War, and imported into *Great Britain, &c.* shall be liable to the Payment of the same Customs and Duties as those Goods would have been, had they not been Prize.

C H A P. XII.

Of Cruizers at Sea and Convoys, for better securing the Trade of this Kingdom.

A Convoy signifies one or more Men of War, to accompany and protect Merchant Ships in a dangerous Voyage, in Time of Wars, and Difference with other Nations: And Cruisers, are Ships of War appointed to cross the Seas to and fro, particularly on the Coasts

Coasts of this Kingdom, for clearing the same from Enemies.

A Ship insured to a certain Place abroad, was warranted to depart with Convoy: And the Ship being lost, an Action of the Case was brought, wherein the Jury found a special Verdict to this Purpose, *viz.* That the Ship departed out of the River *Thames* under the Convoy of a Man of War; that about the Isle of *Wight* she was separated from the Convoy by bad Weather, and put in at *Torbay*, and was detained there by contrary Winds; that the Master of the Ship expecting to meet the Convoy, failed out of the Harbour, but could not meet with her, being hindered by Strefs of Weather; that the Ship was taken by the *French*, and so lost, &c. Here the Question was, what the true Meaning of those Words is, *viz. Warranted to depart with Convoy?*

The Counsel for the Plaintiff, insisted and would have it, that no more was intended than a Departure with Convoy at the first setting out of the River of *Thames*; and that this being provided, and so found by the Verdict, they had fulfilled their Warranty. And that what was afterwards done by the Master of the Ship in coming out of the Harbour, ought not to prejudice the Plaintiff; for the Master is in Nature of a common Carrier, to convey Goods from one Port to another; but as 'tis here found, he did not misbehave himself, for he came forth to meet his Convoy, and did endeavour it, but was hindered by the Weather. And suppose the Words had been, warranted to depart with Convoy, and so to continue to the End of the Voyage; (Dangers of

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the Sea only excepted) if the Ship should happen to be taken by the Enemy, that is a Danger at Sea; or if the Convoy leave her, being commanded another Way by the King; or in Case she be assaulted and will not fight, the Insurers shall lose nothing in either of these Cases: For the Words signify, that all necessary Care shall be taken to preserve the Ship, which was done in this Case.

For the Defendant it was said, that by these Words, the Ship ought to go all the Way with Convoy, and not out of the Mouth of the River only, where there is no Danger from an Enemy, for that could never be the Meaning or Intention of the Parties, and that she should be left at Sea where there is Danger. This Agreement is but a parol Contract, and must be construed according to the Minds of the Parties, and not according to the strict Sense of the Words: As when a Person is obliged to Secure a Thing under such Terms and Circumstances, the Manner of the Promise must be observed and pursued. So if a Promise be made to deliver Goods at *London*, and for that Purpose they are put in a Boat, which is afterwards drowned, notwithstanding the Party used his Endeavour, that shall not discharge him, because he having undertaken to do the Thing on his Part, he ought to perform it.

'Tis found by the Jury, that the Master of the Ship departed out of the Harbour, in expectation of meeting the Convoy, which must be to sail with her, and be protected by her the rest of the Voyage, or otherwise a Convoy will signify very little or nothing. Here was a Severance by bad Weather: Now the Ship

Ship might have come up to the Convoy, or that to the Ship; but she did not stir 'till the Ship was taken, therefore the other Parties being to provide a Convoy, here is a Breach of the Agreement on their Side, which will hinder them from bringing this Action, especially since it is an entire Agreement, and no precedent Condition.

The Court declar'd, that the Word Depart is only *terminus a quo*; and if the Ship had departed from *London*, and came back again by Fraud, that had been no Departure within the Intention of this Agreement: But upon this Departure, as it is found, the Voyage was begun with Convoy; they were afterwards separated by Strefs of Weather, and both endeavour'd to save themselves, and afterwards to find out each other; and there being no Fraud found in the Master, Judgment was given for the Plaintiff. Tho' it might have been otherwise determin'd, if the Convoy had run from the Ship, and by that Means she had been taken.

Adjudged in *Michaelmas* Term, 3 *Will. & Mar.* in the Case of *Jefferies* and *Legendra*, a short Note of which is inserted under the Head Insurance in Vol. 1. See 4 *Mod. Rep.* 58. & 59. &c.

By an Act of Parliament made 6 *Ann. cap.* 13. it is enacted, that for the better preserving such Ships as shall be employed in the Trade of *Great Britain*, over and above the Ships of War for the Line of Battle, and Convoys for remote Parts, forty-three Men of War shall be employed as *Cruisers*, viz. six Third-Rates, twenty Fourth-Rates, thirteen Fifth-Rates, and

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four Sixth-Rates, to cruize in such Stations as the Lord High Admiral or Commissioners of the Admiralty shall direct; nine of which to be on the North-East of *Great Britain*, and three on the North-West Coasts thereof. These Men of War are to be careen'd at least three Times a Year; and the Seamen on Board such Ships, shall not be turn'd over to any other Ships: But in Case of great Necessity, any of the said Cruisers may, by Appointment of the Lord Admiral, &c. be employed in the Line of Battle on this Side Cape *Finister*; otherwise to be always used in Home cruising, except when they are careening or refitting.

The Lord High Admiral, or Commissioners of the Admiralty, to appoint a Commissioner of the Navy, or some one or more Person or Persons, who shall constantly reside at such Place or Places as her Majesty shall appoint; by Virtue of which Appoinment, such Persons are to supervise every Thing relating to these Cruizers, and take Care that all Necessaries for them be immediately provided, when they come into Port through Strefs of Weather, or to careen and refit; and as soon as they are refitted, shall order them to Sea again. And the Commissioners of the Navy in each of the Out-Ports, or the Persons employed for that Purpose, shall send up to the Admiralty, within eight Days of the Meeting of every Parliament, an Account digested into Columns, of the Time when any one of the said Ships sail'd out of Port, when she came in, how many Days such Ship was on Duty, and how often, and Time when and where, careened every Year; also the Reasons of her putting into Port,

Port, and Time and Reason of her Stay there: Which Account shall be laid before the Houses of Parliament, within eight Days after the Meeting of every Session.

And the Lord Admiral, or Commissioners of the Admiralty, shall every Year during the War, between the first of *November* and the first of *December*, appoint the aforesaid Number of Men of War, of the Rates aforementioned, to be Cruizers or Convoys on this Side Cape *Finister* for the Year ensuing; and as often as any of them shall happen to be taken, or be lost, another Man of War of the same Rate shall be appointed as soon as may be, to supply its Room.

If any Ship of War, Privateer, Merchant-Man, or other Vessel, shall be taken as Prize by any of her Majesty's Men of War, &c. and adjudged Prize in the Courts of Admiralty, the Officers and Seamen who shall be actually aboard such Man of War or Ship that took the Prize, shall after Condemnation have the sole Interest in it to their own Use, without accounting further for the same; and the Prize shall be sold by such Persons as the Officers of the Captor, or the Majority of them, shall under their Hands and Seals appoint; and the whole Produce to be divided among the said Officers, Seamen and others, according to their respective Shares and Proportions, as her Majesty shall direct by Proclamation.

But if the Lord High Admiral, or Commissioners of the Admiralty, shall think fit to take into Her Majesty's Service any such Prize-Ship, so taken and condemn'd, then the Ship and Furniture, with her Stores, &c.

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shall be appraised by Officers appointed by her Majesty, or the Commissioners of the Navy, and also by the like Number of Persons to be appointed by the major Part of the Commanders and Officers belonging to the Captors of such Prize; and on producing such Appraisement, together with a Certificate of the Delivery of the Ship so taken, with her Furniture, &c. to the Use of her Majesty, the Commissioners of the Navy shall, within fifteen Days, make out Bills for paying the full Value, according to the Course of the Navy, to be distributed amongst the Captors, as aforesaid.

And for a further Encouragement, there shall be paid by the Treasurer of the Navy, upon Bills made forth by the Commissioners of the Navy, to the Officers, Seamen and others on board any Man of War, &c. in such Action, 5*l.* for every Man which was living on board the Ship taken as Prize, at the Beginning of the Engagement; the Numbers of such Men to be proved by the Oaths of three or more of the chief Officers, &c. that belong to the Prize at the Time of her being taken, before the Mayor or chief Magistrate of such Port whither such Prize is brought: And the Mayor, &c. is required to administer such Oath, and forthwith grant a Certificate thereof, without Fee or Reward; upon producing of which Certificate, and a Copy of the Condemnation of the Prize, the Commissioners of the Navy within fifteen Days shall make out Bills for the Amount of such Bounty, directed to the Treasurer, payable to the Captors, and
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to be divided among them, as her Majesty's Proclamation shall direct for that Purpose.

Nothing herein shall exempt any Ships, Goods or Merchandize taken as Prize, from Payment of Customs, or being subject to such Restrictions to which the same are, or may be liable, by the Laws of the Realm: But such Goods, &c. when brought into Port, shall be unladen in the Presence of the Custom-House Officers for such Port; and put into her Majesty's Warehouses, and there lock'd up with three Locks, the Key of one to be kept by the Collector of the Port, another Key by the Comptroller, and the other by the Agents employed by the Captors, 'till the Goods can be appraised and sold. The Captors may bring Appraisers to view, appraise and buy them at reasonable Times, and when such Goods are sold, the Persons buying them shall pay the Customs before Delivery, &c.

All Appraisments, and Sales of such Ships and Goods, shall be made by Agents nominated in equal Numbers by the Commander, Officers, and Seamen; if the Captain of the Captor appoints one or more Persons, then the other Officers, or the Majority of them, shall nominate the like Number, and all the Ship's Company, or the major Part of them, the same Number, to act in their Behalf. And after the Sale of such Prize, &c. publick Notice shall be given by the Agents nominated as aforesaid, of the Day appointed for Payment of the several Shares to the Captors; after which Notice, if any Mens Shares remain in the Hands of the Agents, either belonging to such Men as shall die, or run from

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the Service, or shall not be legally demanded within three Years, such Shares so remaining in the Agents Hands, shall go to *Greenwich Hospital*.

And the Bills made out, as well for the Value of Prizes taken into her Majesty's Service, as for the Bounty-Money aforesaid, shall be made payable to the Agents appointed by the Captain, the Majority of the Officers, and the major Part of the Ship's Company, to be distributed among them as above-mentioned; and the Shares of such Captors, if not demanded in three Years, to go to the said *Greenwich Hospital*.

If any Officer, or Seaman, shall break Bulk on board, or imbezil any of the Goods, Merchandize, Tackle, Furniture, or Apparel belonging to such Prize, he shall forfeit treble the Value of all such Goods, &c. one Third Part to *Greenwich Hospital*, and the other two Thirds to the Informer.

A Proclamation issued pursuant to this Act, appointing the Distributions of Prizes taken, and the Bounty for taking Ships of War, &c.

BY which it was ordered, That the neat Proceed of all Prizes, and Bounty-Money for Prisoners taken, be divided into eight equal Parts; whereof the Captain of the Man of War who shall be on board at the taking of the Prize, shall be allow'd three Eighths; of which one Eighth shall go to a Flag Officer, if actually on board. To the Marine Captains, Sea Lieutenants, and Master, shall be allow'd one Eighth, to be equally divided among them,

them. The Marine Lieutenants, Boatswain, Gunner, Purser, Carpenter, Master's Mate, Surgeons, and Chaplain, one Eighth, to be equally divided amongst them. The Midship-Men, Carpenter's Mates, Boatswain's Mates, Gunner's Mates, Yeoman of the Sheets, Coxswain, Quarter-Master, Quarter-Master's Mates, Surgeon's Mates, Yeomen of the Powder-Room, and Serjeants of Marines, one Eighth, equally to be divided among them. The Trumpeters, Quarter-Gunners, Carpenter's Crew, Steward, Cook, Armourer, Steward's Mate, Cook's Mate, Gunsmith, Cooper, Swabber, ordinary Trumpeter, Barber, able Seamen, ordinary Seamen, Volunteers by Letter, and Marine Soldiers, two eighth Parts, to be equally divided amongst them.

Every Captain of a Man of War taking any Prize, is enjoined as soon as may be, to transmit to the Navy-Board, a true List of the Names of all the Officers, Seamen and others, who were on board such Ship of War under his Command, at the taking of such Prize; which List is to contain the Number of each Person as he stands on the Ship's Book, and the Quality of his Service, sign'd by the Captain, and three or more of the Chief Officers.

And in Case any Sea Captain, inferior Commissioner or Warrant Sea Officers, belonging to any Ship of War, to whom any Shares of Prizes are allow'd, be absent at the Time of the Capture of the Prize; the Share of such Sea Captain, &c. shall be cast into the Shares allowed to the Trumpeter, Quarter-Gunner-Carpenter's Crew, Steward, Cook, Armourer, Steward'

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Steward's Mate, Cook's Mate, Gunsmith, Cooper, Swabber, Trumpeter, Barber, able Seamen, Volunteers by Letter, and Marine Soldiers, to be equally divided among them.

The Commissioners of the Navy are required, after Condemnation of the Prize, to examine the before mentioned List of Officers and Seamen by the Muster Book of the Man of War, and see that such List agrees with it, as to the Names, Qualities, or Ratings of the Officers, Seamen, and others belonging to such Ship of War; and upon Request, shall forthwith grant a Certificate of the Truth of any List transmitted to them, to the Agents nominated by the Captors; and also on Application to them made, are to give the said Agents all such Lists from the Muster-Book of any Ships of War, as they shall find requisite for their Direction in paying the Produce of such Prizes, or the Bounty Money, when due; and to be otherwise aiding and assisting to the said Agents as shall be necessary.

And the Agents appointed to make Sales of the Prizes, shall give Notice of the Day and Place which they appoint for the Payment of the Shares to the Captors, in the *London Gazette*, that the Notification relating to the three Years within which the several Shares are to be demanded, or to go to *Greenwich Hospital*, may be ascertain'd: And that the Governors of that Hospital may know, who are the Agents employ'd to receive and pay the said several Shares of such Persons as were on board the Ships that took any Prizes, so as to demand the Share of such of
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the Captors who shall die, or run from the Service, or shall not legally make their Demand within the three Years, a true List of the Agents, for the Purposes aforesaid, shall be forthwith certified to the Governors of the said Hospital by the Court of Admiralty; which upon Delivery of any Prize Ship, is requir'd to take an Account of the Names of such Persons as are appointed Agents by the Captors.

By Order of Council made in the Reign of King William III. and afterwards confirmed by Queen Anne, a Method was directed to be observed by the Commanders of Men of War, &c. in examining and securing the Prisoners taken on board Privateers, for the more easy Conviction of Traitors and Pirates, being her Majesty's Subjects, found in Privateers belonging to the Enemy.

When they take any Privateer, they shall carefully examine all Prisoners suspected to be *English, Scotch, or Irish*, so soon as they are taken; and such of them as own their Country, shall set their Hands or Mark to their Examinations, in the Presence of Witnesses. And if any of the Ship's Crew, &c. can speak to the Place of the Nativity, or usual Habitation of any Prisoners, their Declaration is to be taken in Writing, signed by them: Also three or four of the Ship's Company, thought most proper, shall be chosen and ordered to take particular Notice of such Prisoners as shall either confess themselves to be born within her Majesty's Dominions, or are suspected to be so by their Language, or any other Circumstances, to the End that they

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may be able to speak positively thereof on a Trial. And when any such Prisoners are set on Shore, they shall be immediately carried before a Magistrate to be examin'd, together with the Witnesses, &c.

And on taking any Privateer from the Enemy, they are to take special Care to secure the Papers, particularly the Commission, and the Roll *de l'Equipage*, or List of Seamen's Names; and three or four of the Ship's Crew shall take particular Notice of such Commission and Papers, and of the Seizure and Delivery of them, and set their Marks thereon, so as they may be able to prove the same upon Occasion: And the said Papers are to be transmitted to the Judge of the High Court of Admiralty at *Doctors Commons*, as soon as possibly may be.

In case no Commission be found, upon taking any such Privateer, then they are to cause all the Prisoners to be carried before some Magistrate so soon as they shall be brought on Shore, with such Witnesses as they shall think requisite, who can speak to the Manner of the Capture, and the Identity of the Prisoners, and that the Ship was armed in like Manner; and thereupon all the said Prisoners shall be committed as Pirates.

C H A P. XIII.

Of Piracies, Pirates and Sea Rovers.

A PIRATE is a Sea Thief, who, to enrich himself, either by Surprize or Force, sets upon Merchants and others trading by Sea, ever spoiling their Lading, if by any Possibility he can get the Mastery, and sometimes depriving them of their Lives, and sinking the Ships.

These Pirates are common Sea Rovers, without any fixed Place of Residence, who acknowledge no Sovereign and no Law, and support themselves by Pillage and Depredations at Sea. They are Enemies to all, for which Reason neither Faith nor Oath is to be kept with them: They shall be denied Succour by the Laws of Nations; and the Law of Arms is not communicated to such, for they are not capable of enjoying that Privilege, which lawful Enemies are entitled to in the Caption of another.

And it is observ'd, that Pirates, though so call'd, are not properly term'd Enemies; a Company of Pirates or Free-booters make not a Common-wealth, notwithstanding they may keep a Kind of Equality among themselves, without which no Company is able to subsist; and tho' it is seldom they are free from Fault, yet hold Society to maintain Right, and they do it to others, at least on Agreements made between them, or according to Custom:

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Custom : But when a Company of them forming themselves into a Society, submit to Laws, and are acknowledged as a State, they cannot afterwards be treated as Pirates, but as Enemies.

In the Mediterranean Sea, *Algiers*, *Tripoli* and *Tunis*, and some other Towns on the Coast of *Barbary*, are only inhabited by Pirates, that live by no other Means : 'Tis true at the first Establishment of their Predecessors, who were a Set of discontented Mariners, and other Debauchees and Renegadoes of all Nations, it was not thought fit to allow them the Privileges granted to other States, or Civil Societies of Men ; yet they having afterwards modell'd themselves into a formal Method of Government, and acknowledg'd the Grand Signor as their Sovereign, the Kings of *England*, as well as other Princes, have concluded solemn Treaties with them.

Tho' 'tis unquestionably for the Interest as well as Honour of all Princes to suppress Pirates, and not to suffer them to have any Refuge or Retreat within the Extent of their Dominions ; and Princes and States ought to be responsible for their Neglect, if they do not provide Ships of War, and other Remedies for restraining these Sort of Robbers : And altho' it be a Question, how far they are bound by the Civil or Common Law of this Kingdom ; our Kings have been at a considerable Charge for the Reduction of these Wretches, who are the common Disturbers of the Peace of the Universe, and the greatest Plague to Trade and Commerce.

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If Piracy be attempted on the Ocean, and the Pirates are vanquished, the Captors may in such Case immediately inflict a Punishment, by hanging them up at the Main-Yard End, and they are not obliged to bring them to any Port; but this is understood only in Places where no legal Judgment can be obtained. And therefore if a Ship shall be on a Voyage to *America*, &c. on a Discovery of unknown Parts of the World, and in her Way she is attack'd by a Pirate, but in the Attempt the Pirate is overcome; by the Law Marine the Vessel immediately becomes the Captors, and the Pirates may be forthwith executed, without any Solemnity of Condemnation. In other Cases, if the Captors bring them to the next Port, and the Judge neglects their Trial; or the Captors cannot wait for the Judgment without certain Peril and Loss, Justice may be done upon them by the Captors.

By the Law Maritime, if Goods are taken by a Pirate, and afterwards the Pirate making an Attack upon another Ship, is conquered in such Attempt, the Prize shall be absolutely the Captor's; and it is accounted in Law a just Caption of whatsoever may be got, or taken from them, be the same in their own or their Successors Possession: But then an Account must be rendered to the Admiral, who may make Restitution thereof to the Owners; if they are Fellow Subjects of the Captors, or belong to any State in Amity with his Sovereign, on paying the Costs and Charges, and making the Captor such equitable Consideration

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tion as shall be decreed for his Service. *Molloy Jur. Marit.* 42.

If an *Englishman* commits Piracy, on the Subjects of any Prince or State in Amity with the Crown of *England*, they are within the Statute of 28 *H.* 8. and may be convicted of Felony: And so it is, if the Subjects of any other Nation or Kingdom, being in Amity with the King of *England*, shall commit Piracy on the Ships or Goods of the *English*, the same is Felony, and punishable by Virtue of that Act; as it was adjudg'd where the Captain of a *French* Man of War and divers others, attacked four Merchant Ships going from the Port of *Bristol* to *Carmarthen*, and robb'd them of about One thousand Pounds, for which he and the rest were arraigned, and found guilty of the Piracy. *Rot. Admir.* 28 *Eliz.*

Before the 25 *Ed.* 3. If the Subjects of a Foreign Nation and some *English* had joined together, and committed Piracy, it would have been Treason in the *English*, and Felony in the Foreigners; and there is an Instance in our Books of one that was a *Norman* being found guilty of Felony in such a Case, and some *Englishmen* of Treason, who were drawn and hang'd: But at this Day they shall both receive Judgment as Felons, by our Laws and Statutes. In Case any Subjects in Enmity with *England*, shall be Sailors aboard an *English* Pirate with others that are *English*, and then a Robbery is done by them; it is Felony without Question in the *English*, but not in the Strangers, for it was no Piracy in them, but the Depredation of an Enemy, for which they shall

shall be tried by Martial Law, and have Judgment accordingly. 40 *Affis. pl. 25.*

Piracies committed in the *British* Seas, by Subjects of any Nation in Amity with *England*, are properly punishable by this Crown only: And if a *Spaniard* robs a *Frenchman* on the High Sea, both their Princes being then in Amity, and they also with the Crown of *England*, and the Ship is brought into a Port of the King of *England*, the *Frenchman* may there proceed criminally against the *Spaniard* to punish him, and civilly to have Restitution of the Vessel. If a Merchant lose his Goods and Merchandize at Sea by Piracy, &c. (not being wreck'd) and they afterwards come to Land, on making Proof of the Property, they shall be restor'd: And where a Pirate takes Goods upon the Sea, and sells them, the Property is not hereby changed; no more than if a Thief on the Land had stolen and sold them. Yet by the Common Law of *England*, if a Man commit a Piracy upon any other Prince's Subjects, and shall then bring the Goods into this Kingdom, and sell them in a Market Overt, the same shall be binding, and all Persons concluded. *Selden Mare Claus. lib. 1. cap. 27. Hob. Rep. 79.*

It is said, where a Ship or Goods taken by Pirates, are carried into a Port, and there sold, that the Taking being originally within the Admirals Jurisdiction, it continues so as incident thereto: 'Tis otherwise when a Ship is taken by Enemies, for in that Case the Property is altered. The Owners having sent a Ship to the *Indies* to merchandize, in the Voyage the Mariners committed Piracy on the Sea, and when the Ship return'd into the *Thames*,

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she and all the Goods were seized and claimed by the Admiral as *Bona Piratorum*, by Virtue of the King's Grant: But by *Coke*, tho' the Admiral had such Grant of Pirates Goods; that must be intended of their proper Goods, and not those which they got by Piracy. 1 *Ventr.* 173. 2 *Lev.* 25. 1 *Roll.* 285.

A Ship is riding at Anchor, and the Mariners part in their Ship-Boat, and the rest on Shore, so that none are left in the Ship; if a Pirate shall attack her, and commit any Robbery, the same is Piracy. But in Case a Pirate enters a Port or Haven, and assaults and robs a Merchant-Ship at Anchor there, this is not Piracy, because 'tis not done upon the High Sea; for it is a down-right Robbery at the Common Law, the Act being *infra Corpus Comitatatus*: If the Crime be committed either *super altum Mare*, or in great Rivers within the Realm, which are looked upon as common Highways, there it is Piracy. Though a Ship being at Sea, and in great Necessity, may attack another Ship, and take out some Victuals, Cables, Ropes, Anchors, or Sails, (if that other Ship can possibly spare them) without being guilty of Piracy, on paying ready Money for such Things, or giving Security for Payment of the Value. 14 *Ed.* 3. *Moor's Rep.* 756.

If a Bale of Merchandize be delivered to a Master of a Ship to carry over Sea to such a Port, and he goes away with it to another Port, and there disposes of the same; 'tis no Felony or Piracy: But if he opens the Bale, and takes any Thing out, with a felonious Intent, he may be indicted for it in the Admiralty, tho' it

it amounts not to a Piracy. And if such Master of a Ship, shall carry the Lading to the Port appointed, and after retake the whole Bale of Goods back again, this may amount to Piracy; for he being in the Nature of a common Carrier, the delivery had taken its Effect, and the Privy of it is determined. 3 Co. Inst. 107, 108.

In Case a Ship shall be attack'd by a Pirate, who only takes away some of the Men, in order to the selling them for Slaves; this is Piracy: And if a Pirate attacks a Ship, and the Master for Redemption gives his Oath to pay a certain Sum of Money, tho' there be no taking, yet is the same Piracy by the Law Maritime; but by our Common Law there must be an actual Taking, if it be but to the Value of a Penny, as in Case of Robbery on the Highway. A Master of a Ship is assaulted by Pirates, if he does his utmost to defend himself, but is taken by Force; here if for redeeming the Vessel, he becomes a Slave to the Captors, by the Law Maritime the Ship and Cargo are tacitly obliged to contribute to his Redemption. But where the Master of a Ship, by his own Folly and Negligence, is surpris'd by a Pirate, who takes him Prisoner; as if the Pirate shall feign himself stranded, and to decoy the Merchant Man for his Relief, shall fire his Guns, or give other Signal, and such Ship accordingly varies its Course for his Assistance, whereupon the Pirate enters him, and to redeem which he is made a Slave; in this Case, there shall not be any Contribution: And if the Ship loses any of her Lading,

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ing, the Master shall answer the same. 44
Ed. 3. 14. *Molloy* 36.

If any Pirate at Sea assault a Ship, and in the Engagement kills a Person in the other Ship, tho' he doth not enter her, by the Common Law, all the Persons on Board the Pirate Ships are Principals in the Murder; but by the Law Marine, they who gave the Wound only shall be Principals, and the rest Accessaries, if the Parties can be known. And when a Man is in Custody for Piracy, and any one assists him to make his Escape, altho' the Offences be committed at Land, as the Court of Admiralty has Power to punish the Principal, so it may the other Offender as an Accessary to the Piracy. *Yelverton's Rep.* 134. *Hardres.* 502.

It has been holden, that there cannot be an Accessary of Piracy, by the ancient Law of this Realm; but if it happens, that there is an Accessary upon the Sea, such Accessary may be punish'd by the Civil Law, before the Lord Admiral: And it was made a Doubt, whether one who was Accessary at Land to a Felony at Sea, were triable by the Admiral, within the Purview of 28 H. 8. Though this is settled by 11 & 12 W. 3. which provides that Accessaries to Piracy, before or after, shall be enquir'd of, tried and adjudged according to the said Statute. 2 *Hawk. Pl. Cr.* 222.

A Fisherman, one *Marsh*, being fishing at Sea, was taken by Pirates; afterwards the Pirates took another Ship belonging to the *Danes*, and having taking the best of the Fisherman's Provisions, instead thereof put into his Ship some of the Goods of the *Danes*, and then suffered him to go away, and he came and
landed

landed here in *England*; upon which he went presently to Doctor *Talbot* a Civilian, and shewed him all this Matter, desiring his Advice in the Case, who directed an Inventory to be made of all the Goods he had in his Ship which were the *Danes*, which was accordingly done: But after this, the *Danes* coming hither, and having Intelligence of the Affair, prosecuted an Indictment against the Fisherman in the Court of Admiralty, for Piracy; upon which Indictment *Ignoramus* was found, and yet they there detained and kept him still in Prison.

Here upon this Matter shewed, a *Habeas Corpus* was prayed for him: To which Coke Ch. J. said, if he had moved barely upon the *Ignoramus* found, and not opened the Matter as his Counsel had done, perhaps the Court might have granted it; but as you have open'd the whole Truth of the Case, (in which you have done well) we will not now grant you any *Habeas Corpus*, for by your own shewing, we have great Cause to suspect you had a Hand in this Piracy. And the whole Court agreed, that the Admiral might keep him in Prison, for Suspicion of Piracy, notwithstanding the *Ignoramus* found on the Indictment. The Court of *B. R.* was then informed, that in the Admiralty they had proceeded to Trial against divers Persons, for Robberies done upon the River of *Thames*: But the Judges answered, if it were so, it was unjustly done by them, for they had no such Jurisdiction. *Pasch. 13 Jac. 1. in B. R. 3 Bulst. Rep. 27, 28.*

Anciently when any Merchants were robb'd at Sea, or there spoil'd of their Goods, the King

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issued out Commissions under the Great Seal of *England*, to enquire of such Depredations and Robberies; and to punish the Parties Offending, and also award Damages to the Persons injured, according to the Laws and Customs of *England*, the Law of Merchants, and of the Marine, *Secundum Legem & Consuetudinem Angliæ, Secundum Legem Mercatorium, & Legem Maritimam*; all three Laws being included in the Commissions: And it has been usual to try Pirates by such special Commissions. *Pat. 6 Ed. 1.*

By the Statute 28 *Hen. 8. cap. 15.* the Preamble of which recites, that Matters Criminal in Pirates were not punishable by the Common Law, but the same was determined and adjudged by the Admiral, after the Course of the Civil Law; it is enacted, that all Robberies and Felonies committed by Pirates at Sea, &c. shall be enquired into, tried and determined in any County of *England*, by the King's Commission limiting the same, in like Manner as if such Offences were done at Land; and the Commission, being under the Great Seal, shall be directed to the Lord High Admiral, &c. and three or four other Persons, as shall be named by the Lord Chancellor; which said Commissioners, or three of them, have Power to enquire into, hear and determine such Offences by twelve lawful Men of the County, so limited in their Commission, as if the Offences had been done at Land within the same County, and according to the Course of the Common Law of the Kingdom.

And

And every Indictment so found and preferred, shall be good in Law, and such Order, Process, Judgment and Execution, be had, made and awarded thereupon, as against Offenders for any Felony done upon the Land; and Persons convicted of Offences, shall suffer Death without Benefit of Clergy, and forfeit Lands and Goods, as if attained of Felony, &c. on Land.

This Statute doth not alter the Offence of Piracy, put leaves it as it was before, viz. Felony only by the Civil Law; but giveth a Trial according to the Common Law, and inflicts Pains of Death, &c. as if the Offenders had been convicted of any Felony done upon the Land: And no Attainder for this Offence corrupts the Blood, the Statute mentioning only that the Offender shall suffer Death, Loss of Lands, &c. but says not, that the Blood shall be corrupted. Likewise the Offender is to be indicted and tried on the Statute, to forfeit his Lands, which are not forfeited by the Civil Law. 3 *Inst.* 112. *H. P.* 77. 1 *Lill. Abr.*

An Indictment for Piracy, must alledge the Fact to be done upon the Sea; and have both the Words of Feloniously and Piratically taken, &c. a Pardon of all Felonies, does not extend to this Offence; for the same ought to be especially nam'd, it being a special Offence, and no Felony in the Eye of the Law of the Land, but by the Civil Law: And for this Reason, Piracy shall not be included in a Statute speaking generally of Felonies, as to Benefit of Clergy, &c. which shall be construed

but

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only of those Felonies which are such by our Law. *Moor* 756. 2 *Hawk.* 345.

The Statute 11 *Æ* 12 *W.* 3. *cap.* 7. Ordains, that all Piracies, Felonies, and Robberies, done in or upon the Sea, or in any River, &c. where the Admiral hath Jurisdiction, may be tried at Sea or upon the Land, in any of his Majesty's Islands, Plantations, &c. appointed for that Purpose, by Commission under the Great Seal of *England*, or Seal of the Admiralty, directed to such Commissioners as his Majesty shall think fit; who may commit the Offenders, and call a Court of Admiralty, consisting of seven Persons at least: And for want of seven, then any three of the said Commissioners (whereof the President of some *English* Factory, or Governor or Member of the Councils in any of the Plantations, or Commander of one of the King's Ships to be one) may call any other Persons such as are Merchants, Factors, Planters, Sea-Captains, Lieutenants, &c. to make up the Number.

And the Persons so assembled may proceed, according to the Course of the Admiralty, in hearing and determining any Case of Piracy, Robbery and Felony, and pass Sentence of Death on the Offenders, who shall suffer such Loss of Lands, Goods, &c. as if they had been convicted and attainted of any Piracies, according to the Act, 28 *H.* 8. and when any such Court of Admiralty is called on Shipboard, or on Land, the King's Commission being first read, the President and the rest of the Court shall take an Oath impartially to try the Prisoner; who pleading Not Guilty, Witnesses shall be produced by the Register, which may
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be cross-examined for the Prisoner, and other Witnesses brought in his Defence; and after a fair Hearing, and all Persons withdrawn but the Register, the Court shall consider of the Evidence, and give Judgment by Plurality of Voices, and Execution thereupon may be awarded by Warrant to a Provost Marshal.

The Register is to be a publick Notary, or for want of such, the President shall appoint and swear a Register; who is to prepare all the Proceedings in a summary Way, and transmit Copies thereof to the Admiralty Court in *England*. And the Commissioners aforesaid, shall have the sole Power of trying the said Crimes and Offences, within the Colonies and Plantations in *America*, governed by Proprietors, or under Grants or Charters from the Crown, and may issue their Warrants for apprehending such Pirates, &c. and their Accessaries, in order to their being tried there, or sent into *England*: And all Governors, &c. in the said Plantations, under Proprietors or Charters, shall assist the Commissioners therein, on Penalty of forfeiting their Charters. Commissions for Trial of the said Offences, sent to any Place within the Jurisdiction of the Cinque Ports here, shall be directed to the Lord Warden of the said Ports, or his Lieutenant, and such Persons as the Lord Chancellor shall appoint; and the Inquisition and Trial to be by the Inhabitants of the same Ports.

If any natural born Subjects, or Denizens of *England*, commit Piracy, or any Act of Hostility, against his Majesty's Subjects at Sea, under Colour of a Commission or Authority

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rity from any foreign Prince or State, or Person whatsoever, such Offenders shall be adjudged Pirates. And if any Commander or Master of a Ship, or Seaman, shall turn Pirate, or give up his Ship, &c. to Pirates, or combine to yield up, or run away with any Ship; or any Mariner lay violent Hands on his Commander, or endeavour to make a Revolt in the Ship, they are declared to be Pirates, and to suffer accordingly: And all Persons, who shall set forth any Pirate, or be aiding and assisting to any one committing Piracy, or shall conceal such Pirate, or receive any Vessels or Goods piratically taken, they shall be adjudg'd accessory to such Piracy, and suffer as Principals.

And by this Act, where any *English* Ship shall have been defended by Fight against Pirates, and any of the Officers or Seamen are killed or wounded, the Judge of the Admiralty, &c. in *London*, or the Mayor or chief Officer in the Out-Ports, assisted by four substantial Merchants, may by Process out of the said Court, levy upon the Owners of such Ship, &c. a Sum not above Two *per Cent.* of the Value of the Freight, Ship and Goods so defended, to be distributed amongst the Officers and Seamen of the said Ship, or Widows and Children of the Persons slain.

Also a Reward of Ten Pounds for every Vessel of 100 Tons, or under, and Fifteen Pounds for every Ship of greater Burthen, shall be paid by the Captain, Commander, or Master of the Ship, to the first Discoverer of any Combination for running away with,
or

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or destroying any such Ship, at the Port where the Wages are to be paid.

By the 4 *Geo. 1. cap. 11.* All Persons who have committed, or shall commit any Offences, for which they ought to be adjudged Pirates by the Act 11 & 12 *W. 3.* may be tried for every such Offence in such Manner as by the 28 *Hen. 8. cap. 15.* is directed for the Trial of Pirates, and shall be utterly debarred from the Benefit of Clergy for the said Offences: But this shall not extend to Persons convicted in *Scotland*; or to his Majesty's Dominions in *America*.

The 6 *Geo. 1. cap. 19.* makes the Statute 11 & 12 *W. 3. cap. 7.* for more effectual Suppression of Piracy, perpetual: And by 8 *G. 1. cap. 24.* If any Master of any Ship or Vessel, or other Person, shall any ways Trade with Pirates by Truck, Barter, Exchange, or in any other Manner; or shall furnish any Pirate, Felon, or Robber on the Seas, with any Ammunition, Provision, or Stores; or fit out any Ship or Vessel knowingly, and with Design to trade with, or supply, or correspond with any Pirate, &c. or if any Person shall consult, combine, or confederate with such Pirate, knowing him to be guilty of any Piracy, Felony, or Robbery; such Offender shall in every of the said Cases, be adjudg'd guilty of Piracy, Felony, and Robbery, which shall be inquired of, tried and determined, according to the Statutes 28 *Hen. 8.* and 11 & 12 *W. 3.* And Ships fitted out with Design to trade with Pirates, and all the Goods and Merchandize put on board the same, shall be forfeited; one Moiety to the King,

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King, the other to the Discoverer of such Design, who may sue for and recover the said Ships, &c. in the High Court of Admiralty.

If any Person belonging to any Ship or Vessel, upon meeting any Merchant-Ship on the High Seas, or in any Haven or Creek, shall forcibly board and enter into such Ship, and tho' they do not seize and carry her off, shall throw over-board, or destroy any Part of the Goods or Merchandizes belonging to the said Ship, the Persons guilty thereof shall be punished as Pirates: And all Persons who by the Act 11 & 12 W. 3. are declared Accessaries to any Piracy therein mentioned, are hereby declared, and shall be deem'd to be principal Pirates; and their Offences shall be enquir'd of, heard and adjudg'd in the same Manner, as Persons guilty of Piracy, &c. and being thereupon attainted and convicted, shall suffer such Pains of Death, Loss of Lands, Goods and Chattles, as Pirates and Robbers.

In Case any Master, or other Officer, or Seaman of a Merchant Ship, which carries Guns and Arms, when they are attack'd by any Pirate, or Ship on which such Pirate is on board, shall not fight, and endeavour to defend themselves and their Ships from being taken; or shall utter any Words discouraging to other Mariners, and by Reason thereof the Ship shall fall into the Hands of the Pirate; every such Master, &c. shall forfeit all the Wages due to him, to the Owners of the Ship, and as a farther Punishment, suffer six Months Imprisonment. But Seamen wounded in the Defence of Ships, and fighting against Pirates, shall

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shall be admitted into *Greenwich Hospital*, and there provided for, &c.

There is a Clause in this Statute, that if any Commander or Officer of any of his Majesty's Ships of War, shall receive or permit to be received on board such Ship, any Goods or Merchandizes, in order to trade with the same, either on his own, or any other Person's Account; except Gold, Silver, or Jewels, and Goods belonging to any Merchant Ship wreck'd, or in Danger of being so, in order to preserve them for their proper Owners; and except such Goods as they shall be ordered to receive on board by the Admiralty; the Captain, &c. so offending, shall upon his being convicted thereof by a Court Martial, forfeit the Command and Office he shall then have in the said Ship, and be for ever after render'd incapable to serve in the same, or in any other Place or Office in the Naval Service of the Crown; and also forfeit the Wages to him due for his Service in the Ship of War whereto he shall belong.

And the said Captain, &c. and the Proprietors of the Goods so put on board such Ship of War, shall incur a Forfeiture of the Value of the said Goods; one Half to go to the first Discoverer, and the other to the Use of *Greenwich Hospital*.

This Act shall extend to all his Majesty's Dominions in *Asia*, *Africa* and *America*, &c. and is made perpetual by 2 *Geo. 2. cap. 28.*

See *Consuls* and *Embassadors*, &c.

C H A P. XIV.

Of Safe-Conducts and Protections, Passports, &c.

A Safe-Conduct, is a Security given by the King, under the Great Seal, to a Stranger, for his safe coming into and passing out of the Realm; and touching which there are several Statutes. A Passport, signifies a Licence granted by any Person in Authority, for the safe Passage of a Man or any Ship, &c. from one Place or Country to another.

As to Protections, there are two Sorts; a publick Protection, where a Prince takes upon him the Defence of another Prince or State, for his Honour or Profit; or a private Protection of Persons or Ships, which is in Effect no more than a Passport for such Purpose. By the Law of Protection, he that is protected owes all Respect and Honour to his Protector, against whom he ought not to conspire or attempt any Thing; and on the other Hand, the Protector ought to defend and succour the protected, and use him well; for otherwise he may withdraw himself from the Protection, and seek another. And the *Genoës* having put themselves under the Protection of the *French* King, revolted; whereupon he changed their Conditions into Privileges, to the End it might be in his Will to deprive them of them, when he should think fit. *Molloy Jur. Marit.* 84.

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In Protections of Ships and Persons, there is generally great Faith kept by the Granters thereof; for at this Day, if a Ship hath the Emperor of *Barbary's* Protection, the Pirates of that Nation if they seize any Ship will restore it; and if there be no Protection, yet if the Ship be taken within Sight of their Castles, the Prize is not absolute; but if Resistance is made, and there be a Caption, she then becomes the Captors for ever, as the Price of Blood.

The Statute of *Magna Charta*, 9 *Hen. 3. cap. 30.* ordains, that all Merchant Strangers, shall have Safe-Conduct of coming into, going out of and remaining in *England*, to buy and sell, &c. if they are not openly prohibited; except in Time of War, and they are of an Enemy's Country: And by 27 *E. 3. cap. 2.* Safe-Conduct is to be granted to Merchant-Strangers, not Alien Enemies, to come and dwell in this Kingdom, and return at their Pleasure; as also to sell their Goods and Commodities, without having them taken from them against their Wills.

By the Act 15 *Hen. 6. cap. 3.* It is recited, That whereas the Lord the King had granted his Letters of Safe-Conduct to certain Persons, to come in and go out of the Realms of *England*, *France* and *Ireland*, with a certain Number of Ships charged with their Merchandizes; and Faith and Credit should as well be given to the Copy called *Vidimus*, sealed under the authentick Seals and approved, as to the Original of the said Letters: And that one *John de Guntier*, granted and delivered such Copy of the said Safe-Conduct to as many Persons

as he pleased, sealed with the Seal of him that called himself King of *France*; under Colour of which a great Navy of Enemies was assembled, and took many Ships, and the King's liege Subjects and Victuals, to the Towns and Fortresses of the Adversaries carried, to the great Damage of the King and his Realm of *England*, &c.

The said Lord the King, at the grievous Complaint to him made thereof by the Commons in Parliament, considering the great Inconveniencies which might ensue by such evil Use of his Letters of Safe-Conduct; doth will and ordain, and hath commanded by the Authority aforesaid, to the Keepers of his Great and Privy Seal, that they shall not suffer such Clause *Vidimus* to be put in any Safe-Conduct from henceforth to be granted, unless some great or notable Cause move the same Lord the King to grant the same in such wise: And willeth also, that in all Safe-Conducts to be granted for the future to any Person or Persons, the Name of them, of the Ships, and of the Masters, and the Number of the Mariners, with the Portage of the Ships, shall be expressed.

By the 18 *Hen. 6. cap. 8.* It is ordained, that Merchants Aliens may at their Pleasure charge Ships and Vessels of *Spain*, and other Parts, Enemies of the King, if the Masters, Owners, or Merchants of such Vessels and Ships have the King's Letters Patent of Safe-Conduct, Surety, or Safe-Guard for the said Ships and Merchandizes, making mention of the Name of the Ships or Vessels, and of the Masters thereof, as the Manner is. And if
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any such Ships charged or loaded with any Merchandizes of such Merchants aforesaid, be taken upon the Sea by the King's Subjects, not having authentick Safe-Conducts for them, within the Board of such Ships or Vessels, at the Day of the taking, or not being enrolled in the Chancery of Record; then the Takers and Possessors of the Goods and Merchandizes so taken, may enjoy and hold the same. And Proclamation is to be made of this Statute on the Sea Coasts, to the Intent that the said Merchants Aliens may have Knowledge thereof.

The Goods and Merchandizes loaded in the said Ships and Vessels of *Spain*, and other Parts, Enemies aforesaid, sometimes by false Witness, Marks, and Letters Testimonials contrived before the making of this Act, were restored to the said Merchants Aliens, together with their Damages and Expences, on Suit made before the King and his Council, or before the Chancellor of *England*; to the great Loss of the Owners, Masters, and Mariners, Takers of the said Ships, &c. and Discouragement of the King's liege People, to take such Ships and Vessels, and also the Hindrance of the Navy of the Realm: All which is set forth in the Preamble of the said Statute.

By 20 *Hen. 6. cap. 1.* All Letters of Safe-Conduct granted to the King's Enemies, or any other Persons, shall be enrolled in the Chancery of the Lord the King, of Record, before such Letters shall be delivered to them to whom the same shall be granted; or shall be void and of no Effect: And if at any Time

hereafter, any Goods or Merchandizes are taken by *English* Subjects upon the Sea or the Coasts of the same, loaden in any Ship or Vessel, belonging to Enemies, and not having sufficient Letters of Safe-Conduct, enrolled in Form aforesaid; they which shall so take the same Goods, shall enjoy them without any Restitution thereof to be made, to whatsoever Persons the said Goods or Merchandizes, at the Time of taking, or before, were belonging.

And the King's Subjects, taking such Ships laden with Merchandize, not having or shewing Letters of Safe-Conduct, and bringing them by Force to a certain Port within the Realm; shall not receive Damage in their Persons or Goods for so doing, if they be ready to make full Restitution of the same Ships and Merchandize, within a reasonable Time after they shall have Knowledge of Letters of Safe-Conduct, enrolled in the said Chancery of Record, before the taking of them.

The Statute 31 *Hen. 6. cap. 4.* Enacts, that if any Subjects offend upon the Sea, or in any Port within the Kingdom, and do Damage to any Person or Persons being Strangers in Amity, League or Truce with us, or having the King's Safe-Conduct, and especially in attacking any such strange Person, and robbing and spoiling of him, his Ship or Goods, &c. the Chancellor of *England* for the Time being, (as well for the Deliverance of any such Person so attacked, as to make Restitution to every Person robbed or spoiled of Ship or Goods, or the Value thereof) shall have Authority,

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thority, calling to his Assistance one of the Judges, upon a Bill of Complaint to him made in this Behalf, to make such Process out of the Chancery, against the Offenders to bring them in there, to answer to the Parties grieved as aforesaid, and against any other Persons to whose Hands any Person so attached, Ship or Goods, shall come, and also for Delivery and Restitution by them to be made of the same Person, Ship and Goods, as shall seem to the said Chancellor expedient and necessary.

And upon this Process made out, the Chancellor shall further proceed if the Case so require, by Advice of any such Judge, to make to the Persons Strangers that are grieved, full Delivery and Restitution of any Person attached, and of all such Ships and Goods, and likewise all their Costs, Expences and Losses disbursed and suffered by them; and thereupon to award all Manner of Execution out of the Chancery, as shall be necessary for such Delivery and Restitution to be had and made as aforesaid.

A late Act 4 *Geo. 2. cap. 18.* Recites, that Treaties are subsisting, between the King and the several Subjects of *Barbary*; by which it is stipulated, that all Ships belonging to his Majesty or his Subjects, may pass the Seas, and enter into the Harbours of the said Governments, without any Seizure or Molestation, upon producing Passes of a certain Form, under the Hand and Seal of the Commissioners for executing the Office of Lord High Admiral, called *Mediterranean Passes*. It is therefore enacted and ordain'd, That if any Person

shall within his Majesty's Dominions, or without the same, falsly forge or counterfeit any Pass for any Ship, commonly called a *Mediterranean Pass*, or shall alter or erase any Pass made out by the Commissioners for executing the said Office of Lord Admiral; or shall publish as true, any forged, altered, or erased Pass, knowing the same to be forged, &c. every such Person being convicted in *Great-Britain, Ireland*, or his Majesty's Plantations where such Offence shall be committed, shall be guilty of Felony without Benefit of Clergy.

And the said Offences, which shall be committed in any Place out of *Great Britain*, either within the Dominions of his Majesty, or without, may be tried and adjudged in any County of *England*, by Virtue of the King's Commission of *Oyer and Terminer*, and Gaol-Delivery, or before any Court of Justiciary in *Scotland*.

By the Laws of *France*, no Vessel shall go out of any Port of that Kingdom to put to Sea, without a Passport from the Admiral, recorded at the Admiralty-Office of the Place from whence the Master departs: And within twenty-four Hours after the Master's Arrival in any Port, he shall present his Passport, and declare the Place and Time of his Departure, the Burthen and Lading of his Ship, the Course he has steer'd, the Hazards he hath run, the Disorders happen'd in his Ship, and all the considerable Circumstances of his Voyage, &c.

And by a Treaty Marine, made by King *Charles II.* with the King of *France*, in the Year 1677, a Form of a Passport (or Sea-Brief)

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is appointed, to be given by the Lord High Admiral of *England*, or those to whom the Exercise of Admiralty Jurisdiction is ordinarily committed; or by the Mayor or other chief Magistrate, or the Commissioners, or other principal Officers of the Customs, in their respective Ports and Places within the Dominions of the King of *Great-Britain*, to Ships and Vessels; which Passport is as follows, *viz.*

An English Passport for Shipping.

TO all to whom these Presents shall come, Greeting. *Thomas* Earl of *P.* Lord High Admiral of *England*, &c. Or We *A. B. C. D. E. F. &c.* Esqrs. Lords Commissioners for executing the Office of Lord High Admiral. Or We the Commissioners, or principal Officers of the Customs in the City or Port of, &c. Do testify and make known, That *G. H.* Master or Commander of the Ship called the *Prince Frederick*, hath appear'd before us, and declar'd by solemn Oath, That the said Ship or Vessel, containing about Two hundred Tons, of which he is at present Master, as aforesaid, doth belong to the Inhabitants of, &c. within the Dominions of the King of *England*: And in Regard it would be most acceptable to us, that the said Master or Commander be assisted in his just and lawful Affairs, We do hereby request you, and every of you, wheresoever the said Master or Commander shall arrive with his Ship, and the Goods laden on board and carry'd in her, that you will please to receive him courteously, and use him kindly;

and admit him, upon paying the lawful and usual Customs, and other Duties, to enter into, remain in, and pass from your Ports, Rivers, and Dominions, and there to enjoy all Kind of Right of Navigation, Traffick, and Commerce, in all Places where he shall think fit, without any Interruption; which we shall most willingly and readily acknowledge, upon all Occasions: *In Testimony* and Confirmation whereof, we have, with our Hand, signed these Presents, and caused them to be sealed with our Seal. Dated the Day of, &c. in the Year, &c.

And the like Form of Passport (*mutatis mutandis*) shall be used by the Most Christian King of France.

The Form of a Dutch Passport or Certificate, for Ships that go from the United Provinces.

TO the most Serene, most Illustrious, most Mighty, most Honourable and Prudent Lords, Emperors, Kings, Commonwealths, Princes, Dukes, Counts, Barons, Lords, Burgomasters, Sheriffs, Counsellors, Judges, Officers, Justices and Regents of all Cities and Places, as well Ecclesiastical as Secular, who shall see or read these Presents. We Burgomasters and Governors of the City of, &c. Do certify, that *A. B.* Ship-Master appearing before us, hath declared by solemn Oath, That the Ship called, &c. containing about, &c. Lasts, of which he is the present Master, belongeth to Inhabitants of the said *United Provinces*; So help him God: And as we would willingly

willingly see the said Ship-Master assisted in his just Affairs, We do request you and every of you, where the abovesaid Master shall arrive with his Ship and Goods, that you will please to receive him courteously, and use him kindly; admitting him upon paying the usual Dues, Tolls, and other Customs, to enter into, remain in, and pass from your Ports, Rivers, and Territories, and there to trade, deal and negotiate in any Port or Place, in such Sort and Manner as he shall desire; which we shall most readily acknowledge in the like Occasion. *In Witness* whereof we have caused the Seal of our City to be hereunto put.

A General Maritime Passport, for a Swedish or other Ship to pass the Sound of Denmark.

WE Consuls and Senators of the Town of, &c. certify, That the Ship, &c. commanded by, &c. belongs to our said Town (or some other Town) in *Sweden*, and is laded only with Goods belonging to *Swedes*, and bound for the Ocean, as the Master and the Owners thereof have declared before us in our Court, desiring this Certificate as a Proof of the same; the Ship and Goods being thereby to be exempted from all Taxes and Vexations in the Passage of the *Sound* and the *Belt*, according to the Treaties between the two Kingdoms. In Testimony whereof, we have caused the Seal of the Town to be put to these Presents, which we have likewise caus'd to be sign'd by the Clerk.
Given, &c.

C H A P. XV.

*Of Leagues and Truces, concerning Things
done on the Sea.*

A LEAGUE is a Covenant, Alliance or Treaty, enter'd into by one Prince or State with another: And though Leagues are commonly offensive, either to make a Conquest, or ballance the Power of one that is more mighty, in hindering him that he grow not greater; yet may Leagues be for the procuring of a general Peace, and Security of Trade.

And a Truce is a League, or ceasing from War, for a certain Time, agreed upon by both Sides. Treaties made with Enemies for a Time only, called Truces, are said to be general, for all the States or Countries of the one or the other Prince, for all Persons, and all Sorts of Commerce: Or else they are particular, for certain Places, and Persons, and for their Commerce. But sometimes a Truce holds the Place of a Peace; such having been made between Princes that are equal in Power, and will not quit any Thing of their Rights by Peace, yet desire to live quietly in the State wherein they are, satisfying by this Means the Point of Honour. *Molloy* 89.

The Truces thus made, are many Times less subject to Rupture than a Peace, which is made perpetual; for Princes or States that find themselves aggrieved with a Treaty that

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is perpetual, seek out plausible Reasons to forsake it, as the Grievance cannot be otherwise repaired; but if the Time be limited and expired, they may pursue that which they think ought to be granted, and if they desire to continue the Truce, it may be easily renew'd: And a Truce cannot by its Condition prejudice the Pretention in the Principals.

A Truce is likewise made to advance a Peace, and to treat it; and so it is sometimes promoted for the more honest discharge of a League, which is made with some other Prince, whom the Parties have accustomed to comprehend therein; so that a Peace following it, or a Truce not being accepted by him, they take Occasion to leave the League, it being in such Case not his Fault that leaves it, that the War as to the other was not ended. In this Kingdom of *England*, general Truces were formerly often Times made.

By the Statute 2 *Hen. 5. cap. 6.* Truces having been broken here, to the great Dishonour and Slander of the King, and against his Dignity; it was declared, that Robbery, Spoiling, breaking of Truce, and Safe-Conducts by any of the King's Liege People, and Subjects within *England, Ireland and Wales*, or upon the Main Sea, should be adjudged and determined to be High Treason: But this Branch making it Treason, is repealed by the 20 *H. 6. cap. 11.*

And in every Port shall be assigned by the King, by his Letters Patents, a Conservator of the Truce, who shall have Authority by the said Letters Patent, and also by Commission of the Admiral of *England*, to enquire of all Offences done against Truces and Safe-Conducts on
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the Main Sea, &c. and out of the Franchises of the Cinque Ports, in like Manner as the Admirals of the Kings of *England* have heretofore, according to the ancient Custom and Law of the Sea used to do; and such Conservator shall have the same Power, to punish all those which shall be indicted or accused before him, as well at the King's Suit as the Parties, and to award Judgment and Execution, &c. saving that the Determination of the Death of a Man, and the Execution thereof, be always reserved to the said Admiral.

The Conservator shall reside in the Port and Place, where he is appointed; and take for his Office 40*l.* *per Annum* of the King at the least, and shall have a Seal of the King's, proper for the said Office. And the said Conservator is to enquire as well within Liberties as without, by Men Inhabitants within the Body of the County and Liberty where the said Port is, of all such Offences done and committed against the Truce, &c. and make Processes against the Offenders, (by *Capias* and *Exigent*) which shall go as well into the Counties where they are supposed to be, as into those where the Indictments against them shall be taken; in which Process, the Names and Surnames of the Persons indicted, and the Town and Country they are of, with their Trade or Mystery, shall truly be inserted: And the said Conservator by himself or his Lieutenant, may hear and determine Differences between Party and Party, concerning Truce and Safe-Conducts.

And two Men learned in the Law, shall be joined in the Commission with the Conservator, as his Associates, and he and they shall make

Deliverance, according to the Law and Usage of the Land, of such Men so indicted before the said Conservator, of Things done within the Body of the County or Liberty where the Port is, against the Truce and the King's Safe-Conducts; and determine such Suits commenced by any Man which will complain before the Conservator, of any Offence done to him against the said Truce, &c. and thereof make due redress and remedy. And the said two Men learned in the Law associated to the Conservator, shall be assisting and attending to him, to make the Deliverances and Determination in Manner and Form aforesaid, when they shall be reasonably requir'd: And both he and they shall be sworn to take no Fee, Gift, or Reward, &c. of any other than of the King only, in hindrance of due Execution and Punishment of the Offenders aforesaid; and if any be offered them, that they forthwith discover the same to the King or his Chancellor, in Pain of Imprisonment and Fine.

Every Master of a Ship, (and Owner also if he be present) shall before he departs out of the Port, take an Oath before the Conservator, not to attempt any Thing against the Truce; and the Conservator shall cause to be enrolled of Record, the Name of such Master and Owner, and of the Ship, together with the Number of the Mariners therein; and if they take any Thing from the King's Enemies, or any others, they shall bring the Things taken into Port, and thereof make full Information to the said Conservator, before they make discharge or Sale of the same: And where for any reasonable Cause the Ship enters some
other

other Port, they shall inform the Conservator there, of the Prize and Quantity of the Things; and procure from him a Testimonial under Seal, of the said Goods taken, and their Value, to be shewed to the Conservator of the Port from whence they first came.

And if any Owner or Master of any Ship or Vessel shall go out of any Port of the Kingdom of *England*, or shall discharge his Vessel contrary to the Form of this Statute, then such Ship or Vessel, with the Prize taken in the same duly made, shall be forfeited to the King; and the said Owner or Master of the Ship committed to Prison, there to remain until he hath made Fine and Ransom: But it is provided, that no Owners of Ships, shall suffer Imprisonment, or make Fine, if they were not present in the same Ships at the Time when the Offence was done. And the Admiral shall have all Forfeitures out of the Cinque Ports, as before hath been used.

Conservators to be made within the said Cinque Ports by the King's Letters Patent, and the Warden's Commission there, shall also have like Power to enquire of Offences done at Sea within their Franchises, and punish Offenders, &c. as the Admirals have reasonably done and used out of the said Franchises. But so that the Determination of the Death of a Man, is reserved to the Warden, or his general Lieutenant: And the said Warden shall have the Forfeitures there, in all Cases as in Times past.

By the 4 *Hen. 5. cap. 7.* If any Person with whom Truce is broken at Sea, complain thereof to the Keeper of the Privy Seal, he shall have

have Letters of Request under the said Privy Seal; and if thereupon the Offenders make not Restitution, he shall have Letters of Marque granted him under the Great Seal, &c. see 14 *Ed. 4. cap. 4.* and *Letters of Marque and Reprizal.*

The King of *France* being upon Terms of Hostility with those of *Flanders*, in the Time of *Edward* the first, did by his Commission constitute one *Keyner Grimbald* Admiral of his Navy, which he then sent forth against the *Flemmings*; by Virtue of which Commission, *Grimbald* in passing to and again in the *English* Seas, took upon him Sovereign Jurisdiction, as Admiral unto the *French* King, taking the Merchants of *England*, and other Nations, and carrying them into *France*, where he caused them to abide his Judgment and award concerning their Goods and Merchandize.

But shortly after the Kings of *England* and of *France* appointed by Agreement certain Commissioners, (termed Auditors in the Record, in the *Tower of London*) to hear and redress the Wrongs interchangeably done by their Subjects, contrary to the Peace or Truce made between them; before which Commissioners, was made this remarkable Declaration following, *viz.*

To the Lords Auditors deputed by the Kings of England and France, to redress the Damages done to the People of their Kingdoms, and of other Territories subject to their Dominions, in Time of Peace and Truce.

THE Procurators of the Prelates, Nobles, and Admiral of the Sea of *England*, and of the Commonalties of Cities and Towns, and of Merchants, Mariners, and all others of the said Kingdom of *England*, and the Territories subject to the Dominions of the King of *England*, and of other Places, as of the Sea Coasts of *Genoa*, *Catalonia*, *Spain*, *Almaigne*, *Zealand*, *Holland*, *Friezland*, *Denmark* and *Norway*, and divers other Places of the Empire, do shew; That whereas the Kings of *England*, by Reason of the said Kingdom from Time whereof there is no Memory to the contrary, have been in peaceable Possession of the Dominion of the Sea of *England*, and of the Isles being in the same, in making and establishing Laws and Statutes, and Restraints of Arms and of Ships, otherwise furnished than to Ships of Merchandize appertaineth, and in taking Surety, and affording Safeguard, in all Cases where need shall be, and in ordering of all other Things necessary for maintaining of Peace, Right and Equity, amongst all Manner of People, as well of other Dominions as of their own, passing through the said Seas, and the Sovereign Guard thereof, and in doing Justice, Right and Law, according to the said Laws, Ordinances and Restraints, and also in all other Things which may appertain to the exercise
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of Sovereign Dominion in the Places aforesaid: And A. de B. Admiral of the Sea, deputed by the King of *England*, and all other Admirals ordained by the said King, had been in peaceable Possession of the Sovereign Guard, with the Cognizance of Justice, and all other the Appurtenances aforesaid, except in Case of Appeal, and of Complaint made of them to their Sovereigns the Kings of *England* in Default of Justice, and for evil Judgment; and especially in making Restraints, doing Justice, and taking Surety of the Peace, of all Manner of People using Arms in the said Sea, and carrying Ships otherwise furnished, and set forth than to Merchants Ships appertaineth, and in all other Points where a Man may have reasonable Cause to suspect them of Robbery, or of other Misdeameanors. *And Whereas* the Masters of the Ships of the said Kingdom of *England*, in the Absence of the said Admiral, have been in peaceable Possession of taking Cognizance, and judging of all Actions done in the said Sea, between all Manner of Persons, according to the said Laws, Statutes, Restraints and Customs; and in the first Article of Confederacy lately made between the Kings aforesaid in the Treaty upon the last Peace at *Paris*, are the Words which follow, in a Schedule annexed to these Presents. First it is accorded between us, and the Messengers and Procurators aforesaid, in the Names of the said Kings, that the said Kings shall from this Time forward be one to the other Good, True and Loyal Friends, and aiding against all Men (save the Church of *Rome*) in such Manner, that if any one, or more whatsoever they be,
would

would disinherit, hinder or molest the said Kings in the Franchises, Liberties, Privileges, Rights, Duties and Customs, of them and their Kingdoms, they shall be good and true Friends, and aiding against all Men, that they may live and die to defend, keep and maintain the Franchises, Liberties, Privileges, Rights, Duties, and Customs abovesaid; except to the King of *England*, Monsieur *John* Duke of *Brabant*, and his Heirs descended of him and of the Daughter of the said King of *England*, and except to the King of *France*, the excellent Monsieur *Dubart* King of *Almaigne*, and Monsieur *John* Earl of *Anbault*, and that the one shall not be of Counsel, or aiding where the other may lose his Life, Member, Estate or Temporal Honour: That notwithstanding, Monsieur *Reyner Grimbald*, Master of the Navy of the said King of *France*, who names himself Admiral of the said Sea, deputed by his Lord aforesaid, in his War against the *Flemmings*, after the said Confederation made and established, and against the Form and Force of the said Confederacy, and the Intention of them that made it, wrongfully assum'd the Office of the Admiralty in the said Sea of *England*, by the Commission of the King of *France*, and used the same one Year and more; taking the People and Merchants of the Kingdom of *England*, and of other Places, passing through the said Sea with their Goods, and delivering the People so taken to the Prisons of the said Lord the King of *France*, in the Ports of his said Kingdom, as to him forfeited and accrewing; and the taking, and detaining of the said People with their said Goods and Merchandize,

chandize, as also his Judgment and Award, hath justified before the Lords Auditors in Writing, by Virtue of the Authority of his said Commission, of the Admiralty aforesaid by himself usurped, and during a Restraint generally made by the King of *England*, by Reason of his Power, and according to the Form of the Articles of the Confederation aforesaid, which containeth the Words under-written, requiring that he might be acquitted and absolved of the same; to the great Damage and Prejudice of the King of *England*, the Prelates, Nobles, and others above-named.

Wherefore the said Procurators in the Names of their said Lords, do pray your Lordships Auditors aforesaid, that you cause due and speedy Delivery of the said People, with their Goods and Merchandize so taken and detained, to be made to the Admiral of the said King of *England*, to whom the Cognizance of the same appertaineth, as is before expressed; so that without the Disturbance of you, or any other, he may take Cognizance thereof, and do that which appertains to his Office aforesaid: And that the said Monsieur *Reyner Grimbald* be condemned, and constrained to make Satisfaction to all the said Parties damnified, so far forth as he shall be able, and in his Default, his said Lord the King of *France*, by whom he was deputed in the said Office; and that after due Satisfaction made to the Parties damnified, the said *Reyner Grimbald*, be so duly punished for the Violation of the said Confederation, that his Punishment may be an Example to others in Time to come,

C H A P. XVI.

*Of Treaties of Commerce, and other Alliances
with Foreign States.*

Treaties in general are concluded either with Enemies or Friends, or those Persons who desire to continue Neuters; and are of Peace to compose all Differences of Princes at War, or to restore Commerce of Kingdoms and States.

In all Treaties, it is a Maxim, that the Power of the one Party and the other ought to be equal; nor shall they be held firm till ratified: But there are Alliances contracted between Princes and States unequal in Honour, or in Power, being Treaties made with those States, which give or take Pension. In the concluding of Treaties of Alliance, Princes should have an Eye to the Power which each Kingdom hath to afford Benefit one to the other, and not examine their Titles; and yet the Leagues between the Crown of *France* and *Spain*, are commonly between Kings and Kings, Realm and Realm, and Man and Man of their Subjects, which in Times past have been look'd upon to be the firmest of Alliances.

By the Laws of Alliances, Princes may aid particular and common Allies, if they are wronged by any one Ally: Though he which is not comprehended in the Treaty of Alliance, cannot be defended against him that is allied,
without

without Breach of the Alliance ; therefore Mediation in such Cases is the only hope of the Oppressed, which not having its Effect, if they put themselves into the Protection of the Mediator, they become in the Nature of his Subjects, and then that Prince is obliged to their Defence, even against his Allies, and this is by natural Right in these Cases.

Some Persons would judge of Treaties, as Lawyers do of Contracts ; and say, that as a private Man is not bound by that which he hath promised by Force or Fear ; so it ought to take Place amongst Princes, and in Treaties which are made between Sovereigns : But that would be unjust and ridiculous, for it were in Effect to banish Faith from all publick Negotiations ; and there is no Treaty, but what is usually made in Arms, by Force, or through Fear, to lose either Life, or Goods, or Liberty, or the State ; which are Causes of just Fear, and may shake the most constant Persons.

Princes who neither love nor hate any Thing, seem generally inclined to Neutrality, and in that govern themselves in their Friendships, according to their Interests. This Neutrality may be of two Kinds ; the one with Alliance with either Party, the other without, which is what is properly so called : The first is govern'd by the Treaty of Neutrality, the latter by the Discretion of the Neuter Prince, whose Carriage ought always to be such, as that he may not give the least Suspicion of inclining more to one than to another. And the Advantages of Neutrality are, that the Neutral Prince or Republick is honoured and respected of both Parties, and by the Fear of his declaring

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against one of them, he remains Arbitrator of others, and Master of himself.

And those Princes that are powerful, have often used to preserve a Neutrality; for whilst other Princes and States ruin themselves by War, such a powerful King fortifies himself with Means; and in the End, may make himself Judge of their Differences. This Policy seems to have been imitated, by the present King of *France* and his Ministers, in several extraordinary political Circumstances: But of late Times, free States and Republicks that are weak, have found Neutrality most beneficial, and much practised it.

In the Year 1652, the *Dutch* being engaged in a War with *England*, were glad to take Advantage of the Misunderstandings which then arose between this Country and *Denmark*, and so concluded a particular Treaty of Alliance with *Frederick* the Third, then reigning in that Kingdom: And the Effect of this good Understanding between the *Danes* and the *Dutch*, visibly appear'd by another Treaty enter'd into by those two Powers at *Copenhagen*, in the following Year. But notwithstanding this strait Union with the King and Crown of *Denmark*, the *Hollanders* beginning very soon to be weary of the War with this Country, were obliged to relinquish all other Advantages to conclude a Treaty of Peace, of which Treaty for the Satisfaction of the curious, here follows an Abstract.

Abstract

*Abstract of a Treaty of Peace and Union between
Oliver Cromwell, as Protector of England,
and the United Provinces of the Low-Countries.*

I. **I**N the first Place, it is agreed, granted and concluded, That from this Day forward, there shall be a true, firm, and inviolable Peace, sincere Friendship, and a nearer and straiter Affinity, Confederation and Union, between the Republick of *England*, and the *States-General* of the United Provinces of the Low-Countries, and the Lands, Regions and Cities situate under their Jurisdiction without Distinction, and between their People and Inhabitants, of any Degree whatsoever.

II. That henceforth all Enmity and Hostilities shall cease.

III. That all Offences, Injuries, Damages and Charges caused and suffered, after the 18th of *May*, One Thousand six hundred and fifty-two, shall be entirely forgot, and bury'd in Oblivion, and no Suits shall be moved, or Satisfaction made for the same; excepting such Depredations as shall henceforth happen to be committed in the *British* Seas, after the Space of Twelve Days, and between the *British* Seas and *St. Vincent's* Cape, after six Weeks, and thence in the *Mediterranean* Sea, and to the *Equator*, after the Space of ten Weeks, and beyond the *Equator* after eight Months from the Publication of this Treaty, or immediately after due Notice of the Peace; and Restitution shall be made of all Things taken, and Injuries done after that Time.

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IV. That all Prisoners of War, of whatsoever Degree or Condition, and in whatsoever Place they be, shall be set at Liberty without Ransom.

V. That such as attempt to disturb the Peace of either State, shall be reputed Enemies.

VI, VII, VIII, IX, X, XI. Are not to our Purpose; and therefore omitted.

XII. That the Subjects of either State shall freely travel through, and trade to all the Dominions of the other in *Europe*, without Prejudice of the Laws and Customs of particular Places, &c.

XIII. That as well the Ships of War, as the other Ships of the *United Provinces* meeting with the Ships of War of this State in the *British* Seas, shall strike their Flag, and lower their Top-Sail, in the same Manner as that has been perform'd in any former Time, under any Government whatsoever.

XIV. That for the better Security and Encouragement of Trade, all Pirates be duly punish'd in the Dominions of either State; and the Effects seized in their Custody, restor'd to the right Owners, if any can be found.

XV, XVI, XVII, XVIII. Articles, are foreign to the others.

XIX. That the Merchants, Mariners, Sailors, and Pilots, &c. of neither State, nor their Ships, Goods or Effects, shall not be detained or arrested, or forced into the Service of the other, without an absolute Necessity; in which Case too, Satisfaction shall be given for the same.

XX. That

XX. That the Ships of War of either State shall take into their Protection and under their Convoy, all Ships belonging to the other State, as long as they steer the same Course with them.

XXI. That if the Ships belonging to the Subjects of one of the States be taken in the Ports of the other, by those of a Third Nation, the State under whose Jurisdiction such Ships are taken, shall do their Endeavours to recover the same.

XXII. That if any Injury shall be done on either Side, no Letters of Reprisal shall be granted till three Months after Justice has been demanded in a friendly Manner, and refused.

XXIII. That such as obtain Letters of Reprisal of either State, shall give in Security before the Judge, which delivers them the same, for their Behaviour.

XXIV. That the Vessels of both Nations, whether Ships of War or others, shall be free to enter into each others Ports, and there buy Provisions or Necessaries, or refit if Need be; provided, that not above eight Ships of War enter into any Port of either Ally, at one Time, except they be forced in by Tempest or Enemies; in which Case, they shall be bound forthwith to acquaint the Governor, or chief Magistrate of the Place thereof, and shall not remain any longer there, than Necessity requires.

The following Articles of this Treaty, after insisting upon the *Dutch* doing Justice on all those concern'd in killing the *English* at Am-

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boyna, only contain some Stipulations for receiving the King of *Denmark* into it, and for procuring the Restitution of some *English* Effects seized in that Country, and Reparation of Damage, &c.

On the Restoration of King *Charles* the Second to his Dominions, a Marine Treaty was concluded between that King, and the States General of *Holland*; in which they composed all ancient Differences: And in the Year 1667, a Treaty of Peace and Alliance, with certain Articles relating to Commerce, &c. was concluded and agreed upon between the aforesaid King *Charles* the Second, and the States General; but as the first eighteen Articles of the Treaty, do not relate to Marine Affairs, and the 19th being the same with the 13th Article of the precedent Treaty, already inserted; I shall begin at the 20th Article of this Treaty, in the Order it is found in the Original.

Some extraordinary Articles relating to Commerce and Marine Affairs, in a Treaty of Peace and Alliance concluded between King Charles the Second, and the States General of Holland, the 21st of July 1667.

XX. And for the greater Freedom of Commerce and Navigation, it is agreed and concluded, That the said King of *Great Britain* and the said States General, shall not receive into their Havens, Cities and Towns, nor suffer that any of the Subjects of either Party do receive Pirates or Sea-Rovers, or afford them any Entertainment, Assistance or Provision, but

but shall endeavour that the said Pirates and Sea-Rovers, or their Partners, Sharers and Abettors, be found out, apprehended, and suffer condign Punishment, for the Terror of others : And all the Ships, Goods and Commodities piratically taken by them, and brought into the Ports of either Party, which can be found, altho' they be sold, shall be restored to the right Owners ; or Satisfaction shall be given, either to their Owners, or those who by Letters of Attorney shall challenge the same ; provided the Right of their Propriety be made to appear in the Court of Admiralty by due Proofs, according to Law.

XXI. It shall not be permitted to the Subjects of the said King of *Great Britain*, and the Inhabitants of the Kingdoms and Countries under his Obedience, or to the Inhabitants and Subjects of the said *United Provinces*, to do or offer any Hostility or Violence to each other, either by Land or Sea, upon any Pretence whatsoever : And consequently, it shall not be lawful for the said Subjects, or Inhabitants, to get Commissions or Letters of Reprisal, from any Prince or State with whom either of the Confederates is at Difference, or in open War ; and much less, by Virtue of such Letters, to molest or damnify the Subjects of either Party. Neither shall it be lawful for any foreign private Men of War, that are not subject to one or the other Party, having Commissions from any othe Prince or State, to equip their Ships in the Harbours of either of the aforesaid Parties, or to sell or ransom their Prizes, or any other Way to truck, as well the Ships and Goods, as any
other

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other Lading whatsoever. And it shall not be lawful for them to buy any Victuals, but what shall be necessary to bring them to the next Port of that Prince from whom they obtain'd their said Commissions. And if perchance any of the Subjects of the said King of *Great Britain*, or of the said States General, shall buy, or get to themselves by Truck, or any other Way, such Ship or Goods which have been taken from the Subjects of the one or the other Party; in such Case the said Subjects shall be bound to restore the said Ship or Goods to the Proprietor without any Delay, and without any Compensation or Reimbursement of Money, paid or promised for the same; provided that they make it appear, before the Council of the said King of *Great Britain*, or before the States General, that they are the right Owners or Proprietors of them.

XXII. That in Case the King of *Great Britain*, or the said States General, do make any Treaty of Amity or Alliance with any other Kings, Republicks, Princes, or States, they shall therein comprehend each other and their Dominions, if they desire to be therein comprehended; and shall give to the other Notice of all such Treaties of Friendship or Alliance.

XXIII. That in Case it happens, during this Friendship, Confederacy, and Alliance, that any Thing shall be done or attempted by any of the Subjects or Inhabitants of either Party against this Treaty or any Part thereof, by Land, Sea or fresh Waters, nevertheless this Amity and Alliance between the

said Nations, shall not thereby be broken or interrupted, but shall remain and continue in its full Force ; and that only those particular Persons shall be punish'd, who have committed any Thing against this Treaty, and none else ; and that Justice shall be render'd, and Satisfaction given to all Persons concerned, by all such who have committed any Thing contrary to this Treaty, by Land or Sea, or other Waters, in any Part of *Europe*, or any Places within the *Streights*, or in *America*, or in any Lands, Islands, Seas, Creeks, Bays, Rivers, or any Places on this Side the Cape of *Good Hope*, within twelve Months Space after Justice shall be demanded ; and in all Places whatsoever on the other Side of the said Cape, within eighteen Months next ensuing, after Demand of Justice shall be made in Manner aforesaid. But in Case the Offenders against this Treaty do not appear, and submit themselves to Judgment, and give Satisfaction within the respective Times above express'd, proportionably to the Distance of the Places, they shall be declared Enemies of both Parties, and their Estates, Goods, and Revenues whatsoever shall be confiscated, for the due and full Satisfaction of the Injuries and Wrongs by them offer'd ; and their Persons also, when they come within the Dominions of either Party, shall be liable unto such Punishments as every one shall deserve for his respective Offences.

XXIV. That the Subjects of the said King of *Great Britain*, and those under his Jurisdiction, may freely and securely travel in all the Provinces of the *Low-Countries* and Dominions of the States General in *Europe*, and through

through them, by Sea or Land, pass to other Places there or beyond them; and through all Quarters of the *United Provinces*, Cities, Forts or Garrisons whatsoever, which are in any Parts of the said Provinces, or elsewhere in their Dominions in *Europe*, as well they themselves exercising Trade in all those Places, as their Agents, Factors, and Servants, may go arm'd or unarm'd, (but if armed, not above Forty in Company) as well without their Goods and Merchandizes as with them, wheresoever they please. The People also and Inhabitants of the *United Provinces*, shall enjoy the same Liberty and Freedom in all the Dominions of the said King in *Europe*; provided that they and every of them do, in their Trade and Merchandizing, yield Obedience to the Laws and Statutes of either Nation respectively.

XXV. That in Case the Merchant-Ships of the Subjects of either Nation shall by Storm, Pirates, or any other Necessity whatsoever, be driven into any Haven of either Dominion, they may depart securely at their Pleasure, with their Ships and Goods, without paying any Customs or other Duties; provided they break no Bulk, nor sell any Thing: And they shall not be subject to any Molestation or Search, provided they do not receive on Board any Persons or Goods, nor do any Thing else contrary to the Laws, Ordinances, or Customs of the Places, where they (as aforesaid) shall happen to arrive.

XXVI. That the Merchants, Masters of Vessels, and Seamen, of either Party, their Ships, Goods, Wares, or Merchandizes, shall not

not be arrested or seized in the Lands, Havens, Roads, or Rivers of the other, to serve at War, or any other Use, by Virtue of any general or special Command, unless upon an extraordinary Necessity, and that just Satisfaction be given for the same; but so as the same shall not derogate from the Seizures and Arrests duly made in the ordinary Courts of Justice of either Nation.

XXVII. That the Merchants on both Sides, their Factors and Servants, and also the Masters of Ships and other Seamen, as well going as returning by Sea and other Waters: as also in the Havens of either Party, or going on Shore, may carry and use, for the Defence of themselves and Goods, all Sorts of Weapons, as well offensive as defensive; but being come into their Lodgings or Inns, they shall there lay by, and leave their Arms, until they be going on board again.

XXVIII. That the Men of War, or Convoys of either Nation, meeting or overtaking at Sea any Merchant-Ship or Ships, belonging to the Subjects or Inhabitants of the other, holding the same Course, or going the same Way, shall be bound as long as they keep one Course together, to protect and defend them against all and every one who would set upon them.

XXIX. That if any Ship or Ships of the Subjects or Inhabitants of either Nation, or of a Neuter, be taken by a third Party in the Harbours of either, not being a Subject or Inhabitant of either Nation, they, in or out of whose Haven or Jurisdiction the said Ships shall be taken, shall be bound to en-

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deavour with the other Party, that the said Ship or Ships be pursued, brought back, and restored to the Owners; but all this shall be done at the Charges of the Owners, or whom it concerns.

XXX. That Searchers, and other like Officers, on both Sides, shall regulate themselves according to the Laws of either Nation, and shall not impose or demand more than they are allow'd by their Commissions or Instructions.

XXXI. That if any Injury be done by either Nation, or the Subjects or Inhabitants of the same, against the Subjects or Inhabitants of the other, or against any of the Articles of this present Treaty, or against common Right; yet nevertheless, no Letters of Reprisal, Marque, or Countermarque, shall be granted by either Side, 'till Justice hath been first demanded according to the ordinary Course of Law; but in Case Justice be there deny'd or delay'd, then the said King of *Great Britain*, and the said States General, or Commissioners of that Nation, whose Subjects or Inhabitants have suffer'd the Wrong, shall publicly require Justice from the other Party, where it was so denied or delayed, or from that Power appointed to hear and decide such Difference, that there may be a friendly Composure, or due Process at Law: But if still there happen more Delays, and neither Justice be administred, nor Satisfaction given within three Months after such Demand, that then Letters of Reprisal, Marque, or Countermarque, may be granted.

XXXII. It

XXXII. It is also agreed, If at any Time it happen (which God forbid) that the Differences now compos'd between his said Majesty and the States General, should fester, and break out again in open War, that then those Ships, Merchandizes, or any Kind of Moveables of either Party, which shall be found to be and remain in the Ports, and under the Command of the adverse Party on either Side, shall not be confiscated, or made obnoxious to any Inconvenience; but the Space of six Months shall be allowed to the Subjects and Inhabitants of either Party, that they may have Leisure to transport from thence the aforementioned Things, and any Thing else that is theirs, whither they shall think fit, without any Kind of Molestation.

XXXIII. That they who have obtain'd private Commissions from either Party, before they receive such Commissions, shall give good and sufficient Security before the Judge of the Court where they receive their Commissions, &c. that they shall do no Damage or Injury to the Subjects or Inhabitants of either Side.

XXXIV. It is also agreed and concluded, that the Subjects and Inhabitants of either Party shall always have free Access to each other's Sea-Ports, there to remain, and from thence to depart with the same Freedom; and not only with their Merchant-Ships and Lading, but also with their Men of War, whether they belong to the said King or States General, or unto such as have obtain'd private Commissions, whether they arrive thro' Violence or Tempest, or other Casualty of the Seas, or to mend their Ships, or to buy Provision;

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Provision; so they exceed not the Number of eight Men of War, when they come there voluntarily, nor remain or abide longer in the Havens or Places adjacent, than they shall have a just Cause to repair their said Ships, or to buy Victuals or other Necessaries: And if a greater Number of Men of War should, upon Occasion, desire to come into such Ports, they shall in no Case enter thereinto, until they have first obtain'd Leave from those to whom the said Havens do appertain, unless they be forced so to do by Storm, or some other Necessity, to avoid the Danger of the Sea: In which Case also, they shall presently make known the Cause of their coming unto the Governor or chief Magistrate of the Place, and shall stay no longer than such Governor or chief Magistrate shall permit them; and shall not do any Acts of Hostility, or other Prejudice in the aforesaid Havens, during their abode there.

XXXV. Furthermore, it is agreed and concluded, That both Parties shall truly and firmly observe and execute this present Treaty, and all and every the Matters contained therein, and effectually cause the same to be observed and performed by the Subjects and Inhabitants of either Nation.

XXXVI. Under this present Treaty, those shall be comprehended, who shall be named by either Party with common Consent before the Exchange of Ratifications, or within six Months after. But in the mean Time, as the covenanting Parties do acknowledge the friendly Offices, and unwearied Endeavours, whereby

whereby the King of *Sweden* interposing his Mediation, hath promoted and carried on this beneficial Work of Pacification unto the desired Conclusion; so to testify their like Affection, it is agreed and covenanted by the common Consent of all the Parties, That his said Majesty of *Sweden*, with all his Kingdoms, Dominions, Provinces and Rights, be included in this Treaty, and comprehended in the present Pacification, after the best and most effectual Manner that may be.

XXXVII. It is also covenanted, concluded and agreed, That the present Treaty, and all and every Thing and Things therein contained and concluded, shall be confirmed and ratified by the said King of *Great Britain*, and the States General of the United Provinces, by Letters Patents on both Sides, sealed with their Great Seal, in due and authentick Form, within four Weeks next ensuing, or sooner, if it can be done; and that within the said Time, the Ratifications on both Sides shall be exchanged at *Breda*; and presently after the Delivery and Exchange of the same, this Treaty and Alliance shall be published in such Form and Place as is usual.

Articles touching Navigation and Commerce, between King Charles the Second, and the States General of the United Netherlands, concluded at the Hague the 7th of Feb. 1667-8.

I. **A**LL the Subjects and Inhabitants of *Great Britain* may with all Safety and Freedom, sail and traffick in all the Kingdoms, Countries, and Estates, which are

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or shall be in Peace, Amity, or Neutrality with *Great Britain*, without being troubled or disquieted in that Liberty by the Ships of War, Gallies, Frigates, Barques, or other Vessels belonging to the States General, or any of their Subjects, upon Occasion and Account of any Hostilities which may hereafter happen between the States General, and the abovesaid Kingdoms, Countries and Estates, or any of them, which are or shall be in Peace, Amity, or Neutrality with *Great Britain*.

II. This Freedom of Navigation and Traffick shall extend to all Sorts of Merchandize, except those of Contraband.

III. This Term of contraband Goods is understood to comprehend only all Sorts of Fire-Arms, and their Appurtenances; as Cannon, Musquets, Mortar-Pieces, Petards, Rests, Bandaliers, Powder, Match, Saltpetre, Bullets, Pikes, Swords, Morions, Head-pieces, Coats of Mail, Halberts, Javelins, Horses, great Saddles, Holsters, Belts, and other Utensils of War, called in *French*, *Affortisemens Servant a l'Usage de la Guerre*.

IV. In this Quality of contraband Goods, these following shall not be comprehended; Corn, Wheat, or other Grain, and Pulse; Oils, Wines, Salt, or generally any Thing that belongs to the Nourishment and Sustainance of Life; but they shall remain free, as other Merchandize and Commodities not comprehended in the precedent Article; and the Transportation of them shall be permitted even unto Places in Enmity with the States

States General, except such Cities and Places as are besieged, block'd up, or invested.

V. It hath been agreed, for the due Execution of what is abovesaid, That the Ships and Barques of the *English*, laden with Merchandize, being entered into any Port of the said States General, and purposing to pass from thence to the Ports of the Enemies, shall be only oblig'd to shew unto the Officers of the Port of the said States, out of which they would go, their Passports, containing the Specification of the Lading of their Ships, attested and mark'd with the ordinary Seal of the Officers of the Admiralty of those Places from whence they first came, whither they are bound, all in usual and accustomed Form; after which shewing of their Passports in the Form aforesaid, they may not be disquieted, nor searched, detained or retarded in their Voyages, upon any Pretence whatsoever.

VI. The same Course shall be used, in Regard of the *English* Ships and Vessels which shall come into any Roads of the Countries under the Obedience of the said States, not intending to enter into the Ports, or being entered thereinto, not to unlade and break Bulk; which Ships may not be obliged to give Account of their Ladings, but in Case of Suspicion that they carry unto the Enemies of the said States any contraband Goods as aforesaid.

VII. And in Case of any such apparent Suspicion, the said Subjects of his Majesty shall be obliged to shew, in the Ports, their Passports in the Form specify'd.

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VIII. But if they were come within the Roads, or were met in the open Sea by any of the said States Ships, or private Men of War, of their Subjects; for avoiding of all Disorder, the said Ships of the United Provinces, or their Subjects, shall not come near within Cannon-shot of the *English*, but shall send out their Long boat, and cause only two or three Men to go on Board the *English* Ships or Vessels, unto whom the Passports and Certificates of the Propriety of the Ships shall be shewn by the Master or Captain of the *English* Ship, in the Manner above specified, according to the Form of the said Certificates which shall be inserted at the End of this Treaty; by which Passport and Certificate Proof may be made, not only of the Lading, but also of the Place of Abode and Residence of the Master or Captain, and Name of the Ship itself; to the End, that by these two Ways it may be known whether they carry Contraband Goods, and that the Quality as well of the said Ship, as of its Master or Captain, may sufficiently appear; unto which Passports and Certificates entire Faith and Credit shall be given. And to the End their Validity may be the better known, and that they may not be in any wise falsified and counterfeit, certain Marks and Counter-signs of his Majesty and the said States General, shall be given unto them.

IX. And in Case any Merchandize and Commodities of those Kinds, which are before declared to be contraband and forbidden, shall by the Means aforesaid, be found in the *English* Ships or Vessels, bound for the Ports
of

of the said States Enemies, they shall be unladen, judicially proceeded against, and declar'd Confiscate before the Judges of the Admiralty of the *United Provinces*, or other competent Officers; but so that the Ship and Vessel, or other freed or allow'd Goods, Merchandize, and Commodities found in the said Ship, may not for that Cause, be in any Manner seized or confiscated.

X. It is further agreed and covenanted, That whatsoever shall be found laden by his Majesty's Subjects, upon any Ship of the Enemies of the said States, altho' the same were not Contraband Goods, shall yet be confiscate, with all that shall be found in the said Ship, without Exception or Reservation: But on the other side also, all that shall be found in the Ships belonging to the King of *Great Britain's* Subjects, shall be free and discharged, altho' the Lading or part thereof, belong to the said States Enemies, except Contraband Goods; in Regard whereof such Rule shall be observ'd, as hath been order'd in the precedent Articles.

XI. All the Subjects and Inhabitants of the said *United Provinces*, shall reciprocally enjoy the same Rights, Liberties, and Exemptions, in their Trade and Commerce, upon the Coasts, and in the Ports, Roads, Seas, and Estates of his said Majesty, which his Majesty's Subjects shall enjoy in those of the said States, and in open Sea; it being to be understood, that the Equality shall be mutual every Way on both Sides, even in Case the said States should hereafter be in Peace, Amity, and Neutrality, with any Kings, Princes and States, who should become Enemies to his said Majesty; so that

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either of the Parties are mutually to use the same Conditions and Restrictions, express'd in the Articles of this present Treaty, with Regard to Trade and Commerce.

XII. And the more to assure the Subjects of the said States, that no Violence shall be offer'd them by the Ships of War belonging to his Majesty of *Great Britain*, or his Subjects, all the Captains of the King's Ships, and all his Majesty's Subjects that send out private Men of War, shall be charged and enjoined not to molest or endamage them in any Thing whatsoever, upon pain of being punished, and made answerable, in their Persons and Goods, for all Costs and Damages, until due Restitution and Reparation be made.

XIII. And for this Cause, the Captains of Privateers and Capers shall from henceforth every one of them be obliged, before they go out, to give good and sufficient Security, before competent Judges, in the Sum of Fifteen hundred Pounds, *&c.* that they will make full Satisfaction for any Injuries or Wrongs they may commit in their Courses at Sea, and for their Officers under them, that shall violate this present Treaty, and the Orders and Proclamations of his Majesty, which shall be publish'd by Virtue and in Conformity to the Regulation therein made; and upon Pain of forfeiting their said Commissions and Licences; which shall in like Manner be practis'd by the Subjects of the said States General.

XIV. If it should happen, that any of the said Captains should make Prize of a Vessel laden with contraband Goods, the said Captains may not open the Chests, Mails, Packs, Bags, or Casks; or sell, exchange, or otherwise alienate

alienate them, until they have landed the same in the Presence of the Judges or Officers of the Admiralty, and an Inventory is by them made of the said Goods found in the said Vessels; unless the Contraband Goods making but a part of the Lading, the Master of the Ship should be content to deliver the said contraband Goods unto the said Captain, and to pursue his Voyage; in which Case, the said Master shall by no Means be hindered from continuing his Course and the Design of his Voyage.

XV. His Majesty being desirous that the Subjects of the said States may be used, in all Countries under his Obedience, as favourably as his own Subjects, will give all necessary Orders, that Judgments and Decrees upon Prizes, which shall happen to be taken at Sea, may be given with all Justice and Equity, by Judges not suspected or concerned in the Matter under Debate; and his Majesty will give precise and effectual Orders, that all Decrees, Judgments, and Orders of Justice, already given and to be given, may be readily and duly executed according to the Tenor of the same.

XVI. And when the Embassadors of the said States General, or any other of their publick Ministers residing in his Majesty's Court, shall make Complaint of the Judgments which shall be given, his Majesty will cause a Review to be made of the said Judgments in his Council, to examine whether the Order and Precautions contained in the present Treaty have been followed and observed, and to provide for the same according to Right and Equity; which shall be done within the Space

of three Months at the farthest : Nevertheless neither before the first Judgment nor after it, during the Time of the Review, the Goods and Effects which are reclaim'd, may not be sold or unladed, unless it be with the Consent of the Parties interested, to avoiding the spoiling of the said Commodities, if they be perishable.

XVII. When Process shall be mov'd in the first or second Instance, between those that have taken the Prizes at Sea, and the Persons interested therein, and the said interested Persons shall come to obtain a favourable Judgment or Decree; the said Judgment or Decree shall have its Execution upon Security given, notwithstanding the Appeal of him that took the Prize : But the same shall not hold on the contrary where the Sentence goes against the Claimers. And that which is said in this present, and in the precedent Articles, for the causing of good and speedy Justice to be done unto the Subjects of the *United Provinces*, in the Matter of Prizes taken at Sea by his Majesty's Subjects, shall be understood and practis'd by the States General, in Regard of Prizes taken by their Subjects from those of his Majesty.

XVIII. But since the Conveniencies and Inconveniencies of Things and Agreements cannot be discover'd but in procedure of Time, and by Observations drawn from mutual Experience; it is therefore agreed between the said King of *Great Britain* and the said Lords, the States of the *United Netherlands*, That at any Time hereafter, when both Parties shall so think it fitting, certain Commissioners, by
each

each Party respectively chosen, shall meet by the common Consent of both; who shall make it their Care and Business to supply whatever shall be found wanting in the afore-mention'd Articles, to change or limit what shall not be convenient and commodious for both, and fully to compleat a farther Treaty, both concerning these Things, and all other the Laws of Navigation.

XIX. All these Agreements, and every Thing therein contain'd, shall be confirm'd and ratified by the said King of *Great Britain* and the States General, &c. (as in the preceding Treaty.)

A Treaty Marine, between King Charles the Second, and the Lords the States General of the United Netherlands, concluded at London the first Day of December 1674.

I. **T**Hat it shall be lawful for all and every the Subjects of the Most Serene and Mighty Prince, the King of *Great Britain*, with all Freedom and Safety to sail, trade and exercise any Manner of Traffick in all those Kingdoms, Countries and Estates which are, or at any Time hereafter shall be in Peace, Amity or Neutrality with his said Majesty; so that they shall not be any Ways hindered or molested in their Navigation or Trade, by the Military Forces, nor by the Ships of War, or any other Kind of Vessels whatsoever, belonging either to the High and Mighty Lords the States General of the *United Netherlands*, or to their Subjects, upon Occasion or Pretence of any Hostility or Difference which now is, or hereafter

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hereafter shall happen between the said Lords the States General, and any Princes or People whatsoever, in Peace, Amity or Neutrality with his said Majesty: And likewise, That it shall and may be lawful for all and every the Subjects of the said Lords the States General of the *United Netherlands*, with all Freedom and Safety to sail, trade and exercise any Manner of Traffick in all those Kingdoms, Countries and Estates which are, or at any Time hereafter shall be in Peace, Amity or Neutrality with the aforesaid Lords the States; so that they shall not be any Ways hindered or molested in their Navigation or Trade, by the Military Forces, or by the Ships of War, or any other Kind of Vessels whatsoever, belonging either to the Most Serene and Mighty King above mentioned, or to his Subjects, upon Occasion or Pretence of any Hostility or Difference, which now is, or shall hereafter happen between his said Majesty and any Princes or People whatsoever in Peace, Amity, or Neutrality with the said Lords the States.

II. Nor shall this Freedom of Navigation and Commerce be infringed by Occasion or Cause of any War, in any Kind of Merchandizes, but shall extend to all Commodities that shall be carried in Time of Peace; those only excepted which follow in the next Article, and are comprehended under the Name of Contraband.

III. Under this Name of Contraband or prohibited Merchandizes shall be comprehended only Arms, Pieces of Ordnance, with all Implements belonging to them, Fire-balls, Powder, Match, Bullets, Pikes, Swords, Lances,

Lances, Spears, Halberds, Guns, Mortar-pieces, Petards, Granadoes, Musquet-rests, Bandaliers, Salt-peter, Musquets, Musquet-Shot, Helmets, Corslets, Breast-plates, Coats of Mail, and the like Kind of Armature, Soldiers, Horses, and all Things necessary for the Furniture of Horses, Holsters, Belts, and all other Warlike Instruments whatsoever.

IV. These Merchandizes following shall not be reckon'd among prohibited Goods, *viz.* All Kind of Cloth, and all other Manufactures woven of any Kinds of Wooll, Flax, Silk, Cotton, or any other Materials; all Sorts of Cloathing and Vestments, together with the Materials whereof they use to be made; Gold and Silver, as well coin'd as not coin'd; Tin, Iron, Lead, Copper, and Coals; as also Wheat, Barley and all other Kinds of Corn or Pulse; Tobacco, and all Kinds of Spices, salted and sinoaked Flesh, salted and dried Fish, Butter and Cheese, Beer, Oils, Wines, Sugars, and all Sorts of Salt, and in general, all Provision which serves for the Nourishment and Sustainance of Life; likewise all Kinds of Cotton, Hemp, Flax and Pitch; and Ropes, Sails and Anchors; also Masts and Planks, Boards and Beams of Wood of what Sort soever, and all other Materials requisite for the Building or repairing Ships, but they shall be wholly reputed amongst free Goods; even as all other Wares and Commodities which are not comprehended in the precedent Article; so that the same may be freely transported and carried by the Subjects of his said Majesty, even unto Places in Enmity with the said States, as also on the other Side, by the Subjects of
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the said States, to Places under the Obedience of the Enemies of his said Majesty; except only Towns or Places besieged, environed or invested.

V. And that all Manner of Differences and Contentions on both Sides, by Sea and Land, may cease and be utterly extinguished: It is agreed, that all Kind of Ships and Vessels whatsoever, belonging to the Subjects of his said Majesty, entering or being entered into any Road or Port under the Obedience of the Lords the States, and purposing to pass from thence, shall be only obliged to shew unto the Officers acting in the Ports of the said States, or to the Captains of the States Ships, or of private Men of War (if any happen there to be) their Passport, commonly called a Sea-brief, in the Form directed, nor shall any Money or any Thing else be exacted from them under that Pretence. But if any Ship belonging to the Subjects of his Majesty of *Great Britain*, shall in the open Sea, or elsewhere out of the Dominions of the said States, meet the Ships of War of the said Lords the States, or private Men of War of their Subjects, the said Ships of the Lords the States or of their Subjects, shall keep at a convenient Distance, and send out their Boat, and it shall be lawful for them only with two or three Men, to go on board the Ships and Vessels of the Subjects of his Majesty, that the Passport (or Sea-brief) of the Propriety thereof according to the Form herein specified, may be shewn to them by the Captain or Master of such Ship or Vessel belonging to the Subjects of his Majesty; and the Ship which shall shew
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the same shall freely pass, and it shall not be lawful to molest, search, detain or divert the same from her intended Voyage: And all the Subjects of the Lords the States shall enjoy in all Things, the same Liberty and Immunity, they in like Manner, shewing their Passports (or Sea-briefs) made according to the Form prescribed at the End of this Treaty.

VI. But if any Ship or Vessel belonging to the *English*, or other Subjects of his Majesty, shall be met making into any Port in Enmity with the Lords the States; or on the other Side, if any Ship belonging to the *United Provinces* of the *Netherlands*, or other Subjects of the Lords the States, shall be met in her Way making into any Port under the Obedience of the Enemies of his said Majesty, such Ship shall shew not only a Passport (or Sea brief) according to the Form prescribed, wherewith she is to be furnished, but also her Cocquets expressing the Contents of the Goods on Board, given in the usual Form, by the Officers of the Customs in the Port from whence she came; whereby it may be known whether she is laden with any Merchandizes prohibited by the third Article of this Treaty.

VII. But if by the shewing the abovesaid Cocquets expressing the Contents of the Goods on Board, so given in usual Form by the said Officers of the Customs in the Port from whence she came, (concerning the shewing whereof it is above agreed) either Party shall discover any Kind of Merchandizes, which in the third Article of this Treaty are declared to be contraband or prohibited, consigned to any Port under the Obedience of their Enemies,

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mies, it shall not be lawful to open the Hatches of such Ship in which the same shall happen to be found, whether she belongs to the Subjects of his Majesty, or of the Lords the States; nor to unlock, or break open Chests, Mails, Packs, or Casks in the same, nor to convey away the least Part of the Merchandizes, before the whole be first landed in the Presence of the Officers of the Admiralty, and Inventoried; neither shall it be any Ways lawful to sell, exchange or otherwise to alienate the same, until such prohibited Goods, are rightfully and lawfully proceeded against, and that the Judges of the Admiralty have by their respective Sentences confiscated the same. Provided always, That as well the Ship itself as the rest of the Commodities found in the same, which by this Treaty are to be reputed free, shall not upon Pretence of their being infected by such prohibited Goods, be detain'd, much less confiscated, for lawful Prize: And if not the whole, but a Part only of the Lading consists of contraband or prohibited Commodities, and the Master of the Ship shall be willing and ready to deliver them to the Captor who seized the same, in that Case the Captor shall not compel the Ship to go out of her Course, to any Port he thinks fit, but shall forthwith dismiss her, and upon no Account hinder her from freely prosecuting her designed Voyage.

VIII. It is further agreed, That whatsoever shall be found laden by his Majesty's Subjects, upon any Ship belonging to the Enemies of the Lords the States, altho' the same be not of the Quality of contraband Goods, may be con-

confiscated; but on the contrary, all that which shall be found in the Ships belonging to the Subjects of his Majesty, shall be accounted clear and free, although the whole Lading or any Part thereof, by just Title of Propriety shall belong to the Enemies of the said Lords, the States; except always contraband Goods, which being intercepted, all Things shall be done according to the Meaning and Direction of the precedent Articles: And by the same Reason, whatsoever shall be laden by the Subjects of the Lords the States, in any Ship belonging to the Enemies of his Majesty, altho' the same be not of the Quality of contraband Goods, may be confiscated: But on the other Side, all that which shall be found in the Ships belonging to the Subjects of the Lords the States, shall be accounted clear and free, although the whole Lading, or any Part thereof, by just Title of Propriety, shall belong to the Enemies of his said Majesty; except always contraband Goods, which being intercepted, all Things shall be done according to the Meaning and Directions of the precedent Articles. And lest any Damage should by Surprise be done to the one Party who is in Peace, when the other Party shall happen to be engaged in War; it is provided and agreed, That a Ship belonging to the Enemies of the one Party, and laden with Goods of the Subjects of the other Party, shall not infect or render the Goods liable to Confiscation, in Case they were laden before the Expiration of the Terms and Times hereafter mentioned, after the Declaration or Publication of any such War, viz. If the Goods were laden in any Port or Place
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between the Places or Limits called the *Soundings* and the *Naz* in *Norway*, within the Space of six Weeks after such Declaration; of two Months between the said Place, the *Soundings*, and the City of *Tangier*; and ten Weeks in the *Mediterranean Sea*; or within the Space of eight Months in any other Country or Place of the World. So that it shall not be lawful to confiscate the Goods of the Subjects of his Majesty, taken or seized in any Ship or Vessel whatsoever, of any Enemy of the Lords the States, upon that Pretence, but the same shall be without Delay restored to the Proprietors, unless they were laden after the Expiration of the said Terms of Time respectively: But so, that it may not be lawful for them afterwards to carry to Enemies Ports, the said Merchandizes which are called contraband, and for the Reason aforesaid shall not be liable to Confiscation: Neither on the other Side, shall it be lawful to confiscate Goods of the Subjects of the Lords the States, taken or seiz'd in any Ship or Vessel whatsoever of an Enemy of his Majesty, upon that Pretence; but the same shall be forthwith restor'd to the Proprietors thereof, unless they were laden after the Expiration of the said Terms of Time respectively; but so, that it may not be lawful for them afterwards to carry to Enemies Ports, the said Merchandizes that are called contraband, and for the Reason aforesaid shall not be liable to Confiscation.

IX. And the more to assure the Subjects of his Majesty, and of the said States, that no Injury shall be offered to them by the Ships of War, or private Men of War of either
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Side, all the Captains of the Ships, as well of his Majesty as of the said States, and all their Subjects who shall set out private Men of War, and likewise their privileged Companies, shall be enjoined not to do any Injury or Damage whatsoever to the other; which if they do, they shall be punished, and moreover be liable to satisfy all Costs and Damages, by Restitution and Reparation, upon Pain and Obligation of Person and Goods.

X. For this Cause all the Commanders of private Men of War, shall from henceforth be obliged, before they receive their Commissions, to enter before a competent Judge, good and sufficient Security by able and responsible Men, who have no Part or Interest in such Ship, in the Sum of fifteen Hundred Pounds Sterling, or sixteen Thousand five Hundred Guilders; and when they have above one Hundred and fifty Men, then in the Sum of three Thousand Pounds Sterling, or three and thirty Thousand Guilders, that they will give full Satisfaction for any Damages or Injuries whatsoever, which they or their Officers, or others in the Service, shall commit in their Courses at Sea, contrary to this present Treaty, or any other whatsoever, between his Majesty and the said States, and upon Pain of Revocation and annulling their said Commissions; in which it shall be always inserted, that they have given such Security as aforesaid: And likewise it is agreed, That the Ship itself shall be also liable to make Satisfaction for Injuries and Damages done by her.

XI. His Majesty and the said States, being desirous that the Subjects of each other may

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be mutually treated in all Countries under their Obedience respectively, with the like Kindness as their own Subjects, will give all necessary and effectual Orders, that the Judgments upon Prizes taken, be given according to the Rule of Justice and Equity, by Judges beyond all Suspicion, and not any Way concerned in the Cause under Debate; and his Majesty and the said States will likewise give strict Orders that all Sentences already given, and which shall be hereafter given, be (according to the Tenor thereof) duly put in Execution, and obtain their Effect.

XII. And whensoever the Embassadors of the Lords the States, or any other their publick Ministers, resident at the Court of his Most Serene Majesty of *Great Britain*, shall complain of the Unjustness of Sentences which have been given, his Majesty will cause the same to be reviewed and examined in his Council, that it may appear whether the Orders and Precautions prescrib'd in this Treaty have been observed, and have had their due Effect; and will also take Care that the same be fully provided for, and that Right be done to the Party complaining, within the Space of three Months: And likewise when the Embassadors, or other publick Ministers of his Majesty, resident with the States, shall complain of the Unjustness of Sentences, the said States will cause a Review and Examination thereof to be made in the Assembly of the States General, that it may appear whether the Orders and Precautions prescribed in this Treaty, have been observ'd, and have had their due Effect; and they will likewise take
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XIII. A Suit being commenced between the Takers of Prizes on the one Part, and the Claimers thereof on the other, and a Sentence or Decree being given for the Party reclaiming, the said Sentence or Decree (upon Security given) shall be put in Execution, notwithstanding the Appeal made by him that took the Prize; which shall not be observed, in Case the Sentence shall be given against the Claimers.

XIV. And whereas the Masters of Merchants Ships, and likewise the Mariners and Passengers do sometimes suffer many Cruelties and barbarous Usages, when they are brought under the Power of Ships which take Prizes in Time of War, the Takers in an inhuman Manner tormenting them, thereby to extort from them such Confessions as they would have to be made: It is agreed, That both his Majesty and the Lords the States General, shall by the severest Proclamations or Placaerts, forbid all such heinous and inhuman Offences, and as many as they shall by lawful Proofs find guilty of such Acts, they shall take Care that they be punished with due and just Punishments, and which may be a Terror to others; and shall command, that all the Captains and Officers of
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Ships, who shall be proved to have committed such heinous Practices, either themselves, or by instigating others to act the same, or by conniving while they were done, shall (besides other Punishments to be inflicted proportionably to their Offences) be forthwith deprived of their Offices respectively : And every Ship brought up as Prize, whose Mariners or Passengers shall have suffer'd any Torture, shall forthwith be dismissed and freed, with all her Lading, from all further Examination and Proceeding against her, as well judicial as otherwise.

XV. It is also agreed, that the like Severity of Punishments shall be inflicted upon those, who contrary to the One and twentieth Article of the Treaty of Peace, concluded at *Breda*, shall take Commissions from Enemies, to seize the Ships of either Ally or Party, contrary to what is provided in the said Article.

XVI. Lastly, It is agreed and concluded, That this present Treaty, and all and singular the Things therein contained, shall be with all convenient Speed on both Sides ratified and confirmed, and that the Ratifications thereof shall be within two Months from the Date hereof, rightly and reciprocally exchanged between both Parties : And also that the said Treaty shall within One Month after such exchanging of the Ratifications, be delivered in due and authentick Form to the Governors of the *English East-India* and *African* Companies, and to the Directors of the *Dutch East* and *West-India* Companies ; and shall with the first Conveniency be also sent by

his said Majesty, and by the said Lords the States, to their respective Governors and Commanders in Chief of their Colonies and Plantations in every Part of the World out of *Europe*; to the End, that it may be by them, and all others within their Dominions and under their Power, punctually observed and fulfilled.

As the Articles foregoing these, touching Navigation and Commerce, between his Majesty and the States, were concluded for their respective Dominions in *Europe*; so it here appears that this Treaty Marine, was agreed to for regulating their Naval Affairs all over the World: And after the Conclusion of this Treaty with *Holland*, another of the like Nature was made with *France*, which is proper to be inserted following it, by which the Reader may see the Interests and Advantages of both Countries, are much the same.

A Marine Treaty between King Charles the Second, and Lewis the Fourteenth, the Most Christian King, concluded at St. Germain en Laye, the 24th Day of Feb. 1676-7.

I. **T**HAT it shall and may be lawful for all and every the Subjects of the Most Serene and Mighty Prince the King of *Great Britain* aforesaid, with all Freedom and Safety to sail, trade, and exercise any Manner of Traffick in all those Kingdoms, Countries and Estates, which are, or at any Time hereafter shall be in Peace, Amity, or Neutrality with his said Majesty; so that they shall not

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be any Ways hinder'd or molested in their Navigation or Trade, by the Military Forces, nor by the Ships of War, or any other Kind of Vessels whatsoever, belonging either to the Most Christian King, or to his Subjects, upon Occasion or Pretence of any Hostility or Difference which now is, or hereafter shall happen between the said Most Christian King and any Princes or People whatsoever, in Peace, Amity, or Neutrality with the said King of *Great Britain*. And likewise, that it shall and may be lawful for all and every the Subjects of the said Most Christian King, with all Freedom and Safety to sail, trade, and exercise any Manner of Traffick in all those Kingdoms, Countries, and Estates, which are, or at any Time hereafter shall be in Peace, Amity, or Neutrality with the afore-said Most Christian King; so that they shall not be any Ways hindered or molested in their Navigation or Trade, by the Military Forces, nor by the Ships of War, or any other Kind of Vessels whatsoever, belonging either to the King of *Great Britain* above-mentioned, or to his Subjects, upon Occasion or Pretence of any Hostility or Difference which now is, or shall hereafter happen between his Majesty, and any Princes or People whatsoever, in Peace, Amity or Neutrality with the said Most Christian King.

II. Nor shall this Freedom of Navigation and Commerce be infring'd, by Occasion or Cause of any War, in any Kind of Merchandizes; but shall extend to all Commodities which shall be carried in Time of Peace; those only excepted, which follow in the next Article,
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and are comprehended under the Name of contraband.

III. Under this Name of contraband, or prohibited Merchandizes, shall be comprehended only Arms, Pieces of Ordnance, with all Implements belonging to them, Fire-balls, Powder, Bullets, Pikes, Swords, Lances, Spears, Halberds, Guns, Mortar-pieces, Petards, Grenadoes, Musquet-rests, Bandeliers, Saltpetre, Musquets, Musquet-shot, Helmets, Corislets, Breast-plates, Coats of Mail, and the like Kind of Armature, Soldiers, Horses, and all Things necessary for the furnishing of Horses, Holsters, Belts, and all other War-like Instruments whatsoever.

IV. These Merchandizes following shall not be reckon'd among prohibited Goods, *viz.* all Kind of Cloth, and all other Manufactures woven of any Kind of Wooll, Flax, Silk, Cotton, or any other Materials; all Sorts of Cloathing and Vestments, together with the Materials whereof they are made; Gold and Silver, as well coined as not coined, Tin, Iron, Lead, Copper, and Coals; also Wheat and Barley, and all other Kind of Corn or Pulse; Tobacco, and all Kind of Spices; salted and smoak'd Flesh, salted and dry'd Fish, Cheese, Butter, Beer, Oils, Wines, Sugars, and all Sorts of Salt; and in general, all Provision which serves for the Nourishment and Sustenance of Life; likewise all Kind of Cotton, Hemp, Flax, and Pitch; Ropes, Sails and Anchors, Masts and Planks, Boards and Beams of what Sort of Wood soever, and all other Materials requisite for the building or repairing Ships; but they shall be

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wholly reputed amongst free Goods, as well as all other Wares and Commodities which are not comprehended in the next precedent Article; so that the same may be freely transported and carry'd by the Subjects of the Most Serene King of *Great Britain*, not only from one neutral Place to another neutral Place, or from a neutral Port or Place to a Place in Hostility with the Most Christian King, or from any Place in Hostility with him to a neutral Place; but also from one Place in Enmity with the said Most Christian King, to another Port or Place in Enmity with him; be it that such Ports or Places do belong to the same Prince or State, or to several Princes or States with whom the Most Christian King shall happen to be in War: And in like Manner, that the same may be freely transported by the Subjects of the Most Christian King, not only from one neutral Place to another such Place, or from a neutral Port or Place to a Place in Hostility with the King of *Great Britain*, or from a Place in Hostility with him, to a neutral Place; but also from one Place in Enmity with the King of *Great Britain*, to another Port or Place in Enmity with him; be it that such Ports or Places do belong to the same Prince or State, or to several Princes or States, with whom the King of *Great Britain* shall happen to be in War; except only Towns or Places besieg'd, environ'd, or invested, in *French, Blockades ou Investies*.

V. And that all Manner of Differences and Contentions on both Sides, by Sea and Land, may from henceforth cease, and be utterly
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extinguish'd ; it is agreed, that all Kind of Ships and Vessels whatsoever, belonging to the Subjects of his said Majesty of *Great Britain*, entering or being entered into any Road or Port under the Obedience of the Most Christian King, and purposing to pass from thence, shall be only oblig'd to shew unto the Officers acting in the Ports of the said Most Christian King, or to the Captains of the Most Christian King's Ships, or private Men of War, (if any happen there to be) their Passport commonly called a Sea-Brief ; nor shall any Money, or any Thing else, be exacted from them under that Pretence : But if any Ship, belonging to the Subjects of his Majesty of *Great Britain*, shall, in the open Sea, or elsewhere, out of the Dominions of the Most Christian King, meet the Ships of War of the Most Christian King, or private Men of War of his Subjects, the said Ships of the said Most Christian King, shall keep at a Distance, and only send out their Boat ; and it shall be lawful for them only with two or three Men to go on board the Ships and Vessels of the Subjects of his Majesty of *Great Britain*, that the Passport, or Sea-Brief, of the Propriety thereof may be shewn to them by the Captain or Master of such Ship or Vessel, belonging to the Subjects of his said Majesty of *Great Britain* ; and the Ship which shall shew the same, shall freely pass : And it shall not be lawful to molest, search, detain, or divert the said Ship from her intended Voyage. And all the Subjects of the Most Christian King, shall enjoy, in all Things, the same Liberty and Immunity, they, in
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like Manner, shewing their Passport or Sea-Brief.

VI. But if any Ship or Vessel belonging to the *English*, or other Subjects of his Majesty of *Great Britain*, shall be met by any Man of War making into any Port in Enmity with the Most Christian King; or on the other Side, if any Ship belonging to the Most Christian King, or other Subjects of the said Most Christian King, shall be met in her Way making into any Port under the Obedience of the Enemies of his said Majesty of *Great Britain*, such Ship shall shew not only a Passport or Sea-Brief, wherewith she is to be furnish'd, but also her Cocquets, expressing the Contents of the Goods on board, given in the usual Form, by the Officers of the Customs in the Port from whence she came; whereby it may be known, whether she is laden with any Merchandizes prohibited by the third Article of this Treaty.

VII. But if, by shewing the abovesaid Cocquets, expressing the Contents of the Goods on board, given in the usual Form by the Officers of the Customs in the Port from whence she came, (concerning the shewing whereof it is above agreed) either Party shall discover any Kind of Merchandizes, which in the third Article of this Treaty are declared to be contraband or prohibited, consign'd to any Port under the Obedience of their Enemies, it shall not be lawful to open the Hatches of such Ship in which the same shall happen to be found, whether she belongs to the Subjects of his Majesty of *Great Britain*, or of the Most Christian King; nor to unlock or break open
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the Chests, Mails, Packs, or Casks in the the same; nor to convey away any the least Part of the Merchandizes, before the whole be first landed in the Presence of the Officers of the Admiralty, and inventory'd: Neither shall it be any Ways lawful to sell, exchange, or otherwise to alienate the same, until such prohibited Goods are rightfully and lawfully proceeded against; and that the Judges of the Admiralty have, by their respective Sentences, confiscated the same: Provided always, that as well the Ship itself, as the rest of the Commodities found in the same, which by this Treaty are to be reputed free, shall not upon Pretence of their being infected by such prohibited Goods, be detained, much less confiscated for lawful Prize; but if not the whole, but a Part only of the Lading consists of Contraband or Prohibited Commodities, and that the Master of the Ship shall be willing and ready to deliver them to the Captor, who seised the same: In that Case the Captor shall not compel the Ship to go out of her Course, to any Port he thinks fit, but shall forthwith dismiss her, and upon no Account hinder her from freely prosecuting her design'd Voyage.

VIII. 'Tis farther agreed, that whatsoever shall be found laden by the Subjects of his Majesty of *Great Britain*, upon any Ship whatsoever belonging to the Enemies of the Most Christian King, although the same be not of the Quality of Contraband Goods, may be confiscated: But, on the contrary, all that which shall be found in the Ships belonging to the Subjects of his Majesty of *Great Britain*, shall be accounted clear and free, although the whole

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whole Lading, or any Part thereof, by just Title of Property, shall belong to the Enemies of the Most Christian King; except Contraband Goods, which being intercepted, all Things shall be done according to the Meaning and Direction of the precedent Articles. And, by the same Reason, whatsoever shall be found laden by the Subjects of the Most Christian King, in any Ship whatsoever belonging to the Enemies of his Majesty of *Great Britain*, although the same be not of the Quality of Contraband Goods, may be confiscated: But, on the other Side, all that which shall be found in the Ships belonging to the Subjects of the Most Christian King, shall be accounted clear and free, although the whole Lading, or any Part thereof, by just Title of Propriety, shall belong to the Enemies of his Majesty of *Great Britain*; except always Contraband Goods, which being intercepted, all Things shall be done therein according to the Meaning and Direction of the precedent Articles. And lest any Damage should, by Suprise, be done to the one Party who is in Peace, when the other Party shall happen to be engag'd in War, it is provided and agreed, that a Ship belonging to the Enemies of the one Party, and laden with the Goods of the Subjects of the other Party, shall not infect, or render the Goods liable to Confiscation, in Case such Ship were laden before the Expiration of the Terms and Times hereafter mentioned, after the Declaration and Publication of any such War, viz. If the Goods were laden in any Port or Place between, &c. within the Space of, &c. and between,

tween, &c. (as in the foregoing Treaty with *Holland*) So that it shall not be lawful to confiscate the Goods of the Subjects of his Majesty of *Great Britain*, taken or seized in any Ship or Vessel whatsoever of any Enemy of the Most Christian King, upon that Pretence; but the same shall be without Delay restored to the Proprietors, unless they were laden after the Expiration of the said Terms of Time respectively; but so, that it may not be lawful for them afterwards to carry to Enemies Ports, the said Merchandizes which are called Contraband; and for the Reason aforesaid shall not be liable to Confiscation: Neither on the other Side, shall it be lawful to confiscate the Goods of the Subjects of the Most Christian King, taken or seized in any Ship or Vessel whatsoever of an Enemy of his Majesty of *Great Britain*, upon that Pretence; but the same shall be forthwith restored to the Proprietors thereof, unless they were laden after the Expiration of the said Terms of Time respectively; but so, that it may not be lawful for them afterwards to carry to Enemies Ports, the said Merchandizes which are called Contraband; and for the Reason aforesaid shall not be liable to Confiscation.

IX. And the more to assure the Subjects of his Majesty of *Great Britain*, and of the Most Christian King, that no Injury shall be offered to them by the Ships of War, or private Men of War, of either Side, all the Captains of the Ships, as well of his Majesty of *Great Britain*, as of the Most Christian King, and all their Subjects who shall set out private

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vate Men of War, and likewise their privileged Companies, shall be enjoyn'd not to do any Injury or Damage whatsoever to the other; which if they do, they shall be punished, and moreover be liable to satisfy all Costs and Damages, by Restitution and Reparation, upon Pain and Obligation of Person and Goods.

X. For this Cause, all the Commanders of private Men of War, shall from henceforth, be oblig'd, before they receive their Commissions, to enter before a competent Judge, good and sufficient Security, by able and responsible Men, who have no Part or Interest in such Ship, in the Sum of Fifteen hundred Pounds Sterling, or Sixteen thousand Five hundred Livres; and when they have above One hundred and fifty Men, then in the Sum of Three thousand Pounds Sterling, &c. that they will give full Satisfaction for any Damages or Injuries whatsoever, which they or their Officers, or others in their Service, shall commit in their Courses at Sea, contrary to this present Treaty, or any other whatsoever, between his Majesty of *Great Britain*, and the said Most Christian King, and upon the Pain of Revocation and annulling their said Commissions; in which it shall be always inserted, That they have given such Security as aforesaid; and likewise it is agreed, That the Ship itself shall be also liable to make Satisfaction, for Injuries and Damages done by her.

XI. His Majesty of *Great Britain*, and the Most Christian King, being desirous that the Subjects of each other may be mutually treated
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in all Countries under their Obedience respectively, with the like Kindness as their own Subjects, will give all necessary and effectual Orders, that Judgments upon Ships and Merchandize taken at Sea, be given according to the Rule of Justice and Equity, by Judges beyond all Suspicion, and not any Ways concerned in the Cause under Debate: And his Majesty of *Great Britain*, and the Most Christian King, will likewise give strict Orders, that all Sentences already given, and which shall hereafter be given, be according to the Tenor thereof duly put in Execution and obtain their Effect.

XII. And whensoever the Embassadors, or other publick Ministers of the King of *Great Britain*, residing in the Court of the most Christian King, shall complain of the Unjustness of Sentences which have been given concerning Ships or Merchandize taken at Sea, and belonging to the Subjects of the King of *Great Britain*; then the said Most Christian King, on Demand of the said Embassadors, or Ministers of the King of *Great Britain*, shall cause the said Sentences to be review'd and examin'd in his Privy-Council, and shall confirm or revoke the Sentences so given; and likewise the said Most Christian King shall take Care that Right be done to the Party complaining, within the Space of four Months, to be accounted from the Day of making such Demand. In like Manner, if the Embassadors, or other publick Ministers of the Most Christian King, residing in the Court of the King of *Great Britain*, shall complain of the Unjustness of Sentences
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which have been given concerning Ships or Merchandize taken at Sea, belonging to Subjects of the Most Christian King, the said King of *Great Britain* shall forthwith Commissionate under his Great Seal, nine of his Privy Council, to adjudge such Matters, and to confirm or revoke the Sentences wheresoever given: And the said Commissioners shall meet within the Space of one Month, from the Day of delivering the Complaint; and likewise the King of *Great Britain* shall take Care, that Right be done the Party complaining, within the Space of three Months, to be computed from the first Day of the meeting of the said Commissioners.

XIII. A Suit being commenc'd between the Takers of Prizes on the one Part, and the Claimers thereof on the other, and a Sentence or Decree being given for the Party reclaiming, the said Sentence or Decree, (upon Security given) shall be put in Execution, notwithstanding the Appeal made by him that took the Prize; which shall not be observ'd in Case the Sentence shall be given against the Claimers.

XIV. And whereas the Masters of Merchant Ships, and likewise the Mariners and Passengers, do sometimes suffer many Cruelties and barbarous Usages, when they are brought under the Power of Ships which take Prizes in Time of War, the Takers, in an inhuman Manner, tormenting them, thereby to extort from them such Confessions, as they would have to be made; it is agreed, that both his Majesty of *Great Britain*, and the Most Christian King, shall by the severest Proclamations

tions, or Edicts, forbid all such heinous and inhuman Offences; and as many as they shall by lawful Proofs find guilty of such Acts, they shall take Care that they be punish'd with due and just Punishments, and which may be a Terror to others; and shall command, that all Captains of Ships, &c. who shall be proved to have committed such heinous Practices, &c. shall be deprived of their Offices; and every Ship so brought up as Prize, &c. shall be forthwith dismissed, &c.

XV. It is also agreed, that the like Severity of Punishment shall be inflicted upon those who shall take Commissions from Enemies, to seize the Ships of either Ally or Party.

XVI. And lastly, it is agreed and concluded, That this present Treaty, and all and singular the Things therein contain'd, shall be with all convenient Speed on both Sides ratified and confirmed, and that the Ratifications thereof shall be within two Months from the Date hereof rightfully and reciprocally exchanged between both Parties.

Dated at St. Germain en Laye the Day and Year, &c.

After this Marine Treaty between *Great Britain* and *France*, there is none other wherein *England* is concern'd, 'till the Time of King *James II.* who in the Year 1685, renewed all former Alliances with the *Dutch*, and particularly six several Treaties.

Then the next remarkable Treaty Marine, is a League between K. *William* and Q. *Mary*, and the *States General*, concluded at *Whitehall*

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the 29th April 1689, which contains Articles to this Effect.

I. That their Majesties shall put to Sea fifty large Men of War, viz. One of the 2d, seventeen of the 3d, and thirty-two of the 4th Rate, with fifteen Frigates, and eight Fire Ships, having on board in all 17,155 effective Men.

II. That the States shall put to Sea thirty large Ships, viz. Eight from 70 to 80 Guns, seven from 60 to 70, and fifteen from 50 to 60 Guns; with nine Frigates, and four Fire Ships, which shall have on Board 10,572 effective Men.

III. That the Fleets shall join, where the King of *Great Britain* shall think fit.

IV. That the Fleets of the two Nations shall be divided into three Squadrons; the first to be of fifty large Ships, six Frigates, and eight Fire Ships, to serve in the *Mediterranean*; the second of thirty large Ships, eight Frigates, and four Fire Ships, to serve in the *Irish Sea* and in the Channel, except it be otherwise ordain'd by Consent; and the third of ten Frigates, to serve between the Mouth of the Channel and *Yarmouth*, on the Coast of *England*, and between the aforesaid Place, and the Isle of *Walsbere*, on the Coast of *Zeland*: The two Squadrons to assist occasionally each other.

V. Each of the Squadrons shall be composed of the Ships of both Nations proportionably.

VI. All the Ships of the several Squadrons to be provided for one Year. And what can't be conveniently kept aboard the Ships of the *Mediterranean* Squadron; the King of *Spain*, the Duke of *Tuscany*, and the Republick of *Genoa*,

Genoa, shall be desired to give them a favourable Reception.

VII. Each Squadron shall be commanded by the *English* Admiral, or Commander in Chief.

VIII. The Councils of War shall be composed of all the Flag Officers, of both Nations in equal Number; when the Votes are split, the Captains shall be called; the *English* Admiral shall be President, and the *English* Officers of equal Rank shall have the Precedency of the *Dutch*.

IX. All Causes relating only to the Officers, Sea-men, or Affairs of either of the Nations, shall be try'd by a Council of War of that Nation which they concern; but if both Nations are concerned, the Officers of both shall be present at the Trial.

X. All Prizes shall be divided between their Majesties and the States, in Proportion to the Share they bear in the Charge of the Fleet: That is to say, their Majesties shall have five Eighth's, and the States three Eighth's.

XI. Prizes shall be adjudg'd by the Admiralty of the Nation by whose Ships they were taken, and none but necessary Charges shall be allowed, without any Fees for Officers.

XII. And if the Prizes are taken by Ships of both Nations, they shall be adjudged by the Admiralty of the Nation, to whom the strongest Ships present at the Caption do belong.

XIII. The Ships of either Nation shall have special Orders to protect each others Merchant Men and Plantations in the *West-Indies*.

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XIV. This Treaty to be ratify'd and confirm'd by both Parties.

By a Treaty of Alliance, likewise between King *William* and the *States*, concluded at *London* in *August* following, all precedent Treaties with that State, were confirm'd, with some Additions. And in the Month of *October* 1692, a Treaty was agreed by the King of *Great Britain* and the *States of Holland*, with the King of *Spain*, by which that Prince obliged himself to put to Sea at least sixteen Men of War, of 60 Guns each, with four Fire-Ships, and twenty-five Gallies, and Provisions for ten Months; to be joined by sixteen *English* and *Dutch* Men of War, of the same Force, and four Fire-Ships; upon Condition, that all friendly Offices should be done them by the *Spaniards*.

And to avoid Ceremony, and Inconvenience arising therefrom, by this Treaty the Men of War, Gallies and Fire-Ships, were to meet at the Rendezvous assign'd them, without any Salutation; and for the first Time, the Commanding Officers on all Sides to assemble in the Ship of the first *Dutch* Officer, there to regulate Matters, according to separate Articles, to be agreed on for that Purpose.

The Treaty made at the general Peace of *Ryswick*, is the next that occurs; but it relates only to *France* and *Holland*, by which the *French* and *Dutch* may freely frequent with their Ships and Merchandizes, the Countries, Lands, Towns, Ports and Places of each other, with equal Privileges, and without paying any other or greater Duties in each others Countries, than the natural Subjects of the Country,

try, &c. And now I come to the Treaties of Commerce, between her Majesty Q. Anne, and the Kings of *France* and *Spain*, on the close of the late War.

A Treaty of Navigation and Commerce, between the Most Serene and Most Potent Princess Anne, Queen of Great Britain, &c. and the Most Serene and Most Potent Prince Lewis the fourteenth, King of France, &c. concluded at Utrecht the 31st of March, 1713.

I. **I**T is agreed, That there shall be a perfect Liberty of Navigation and Commerce between the Subjects on each Part, through all and every the Kingdoms, States, Dominions, and Provinces of their Royal Majesties in *Europe*, concerning all Kinds of Goods and Merchandizes, on the Conditions in the following Articles.

II. That if at any Time any ill Understanding shall happen between the Crowns of their Royal Majesties, six Months shall be allow'd to the Subjects and Inhabitants of each Party residing in the Dominions of the other, for them to retire with their Families, Goods, Merchandizes, and Effects, and to sell and dispose of their Goods, without any Manner of Disturbance, Arrest, or Seizure; and they shall have speedy Justice for the Recovery of their Dues.

III. That the Subjects of each of their Royal Majesties shall exercise no Acts of Hostility against each other, neither by Sea nor Land; nor receive any Commission from any Prince or State, to act as Privateers, &c. to the Dis-

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sturbance or Prejudice of the Subjects of *Great Britain* or *France*; and to this End, Prohibitions shall be publish'd on either Side, that no one shall in any wise use such Commissions, &c. under the severest Penalties.

IV. The Subjects of each of the said Confederates, shall have free Liberty, without Licence, to go into the Kingdoms, Countries, Provinces, Islands, Cities, Ports, &c. of each other, in *Europe*, to abide there, pass through the same, and to return from thence; and in the mean time to buy all Things for their Subsistence and Use, and to be treated with mutual Kindness, they behaving conformably to the Laws, and living peaceably.

V. That the Subjects of each of their Majesties shall have Leave to come with their Ships and Merchandizes (not being prohibited) to the Lands, Countries, Cities, and Ports, &c. of either Side, to enter into the same, and remain there without Limitation of Time; also to hire Houses, &c. and buy all Kinds of lawful Merchandizes, and lay up, and expose to Sale, Merchandizes brought from other Ports, (but not to sell the same in Shops or by Retail) without any Impositions, and have free Leave to remove themselves and Families, Goods and Effects, whither shall think fit, without any Molestation, paying the usual Duties. And in the Business of Religion, an entire Liberty shall be allow'd to the Subjects of each of the Confederates, and their Families, privately and within their own Walls, without admitting any other Persons, &c.

VI. The Subjects of each Party shall pay the Tolls, Customs, and Duties of Import and Export,

Export, thro' all the Territories of either Party, as are due and accustom'd; and to ascertain the same, Tables shall be kept in publick Places in all Towns where Trading is used: And if any Officer, or other Person, shall take of a Merchant, or any other Person, any Sum of Money, on Account of Compensation, altho' it be under the Name of a Free Gift, more than what is prescrib'd; such Officer, on Conviction, shall make full Satisfaction to the Party wrong'd, and be punish'd according to Law.

VII. Neither any Merchants, Masters of Ships, Owners, Mariners, or Merchandizes of either Party, shall on any Pretence, be seiz'd in any of the Ports, &c. or Dominions of each other, for publick Use, nor for other Cause, or be in any wise molested; and it shall be unlawful to export any Thing from each other: But however, this is not to be understood of that Seizure which shall be made by the Authority of Justice, and in the Ordinary Methods of Account, Debt, &c.

VIII. Further it is agreed, That all the Subjects of the Queen of *Great Britain*, and of the Most Christian King, in all Countries subject to their Power, as to Duties and Customs concerning Navigation and Commerce, shall have the same Privileges and Immunities in the Courts of Justice, and all Things relating to Commerce, which any foreign Nation, the most favour'd, is allow'd.

IX. It is also agreed, that within two Months, a Law shall be made in *Great Britain*, taking off the Duties on Merchandize brought from *France* to *Britain*, more than are paid by

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other Countries in *Europe*; and that the Acts for prohibiting the Importation of Goods from *France*, be repealed. The general Tariff, made in the Year 1664, shall take Place, and the Duties be paid according to the Tenor of the same, and all Prohibitions, Edicts &c. made in *France* since that Year, shall be repealed. But whereas the Manufactures of Wooll, Sugar, Salted Fish, &c. are urged by *France* to be excepted out of the Rule of the said Tariff, and have not been mutually adjusted; it is provided, that Commissaries on both Sides shall meet at *London*, to determine the same, within two Months after the Exchange of the Ratifications of this Treaty.

X. The Duties on Tobacco imported into *France*, shall be reduc'd to the same moderate Rate as Tobacco of the Growth of any Country in *Europe* or *America*, that is brought into that Kingdom: The Subjects on both Sides shall pay the same Duties in *France*; and there shall be an equal Liberty of selling, and the *British* Subjects have the same Benefit of the Laws as the Merchants of *France*.

XI. The Tax of fifty *Sols Tournois* laid on *British* Ships in *France* for every Ton, and the Tax of 5 *s.* laid on *French* Ships in *Great Britain* for every Ton, shall cease.

XII. It is further agreed, that all Merchants, &c. and Subjects of *Great Britain* in all Places of *France*, shall freely manage their own Business themselves, or as they think fit. And Masters of Ships shall not be oblig'd, in loading or unloading their Vessels at *Bordeaux*, or in any other Place, to make Use of Workmen appointed by publick Authority; but it shall

shall be free for them to employ such Persons as they shall think fit ; neither shall they be obliged to wait for their being loaded, or to receive any Goods: And the Subjects of *France* shall have the same Privileges in all Places subject to the Dominion of *Great Britain*.

XIII. It shall be lawful for Merchants and others, Subjects of either Party, by Will or any other Ways, to devise or dispose of their Moneys and Effects : And whether they die having made their Wills, or Intestate, their lawful Heirs, Executors or Administrators, (altho' they be not naturaliz'd) shall peaceably receive and take Possession of all Goods and Effects whatsoever, according to the Laws of *Great Britain* and *France*, any Law, Statute, Edict or Custom to the contrary notwithstanding.

XIV. A Dispute arising between any Commander of a Ship on either Side, and his Seamen, in any Port of the other Party, concerning the Seamens Wages, or other Civil Cause ; the Magistrate of the Place shall require no more from the Person accused, than a Declaration in Writing, whereby he shall be bound to answer that Matter in his own Country ; whereupon the Seamen shall not desert the Ship, nor hinder the Voyage. And Merchants, on both Sides, shall keep Books of Accounts, and have an Intercourse of Letters, without Molestation or Search.

XV. It shall not be lawful for any foreign Privateers, having Commissions from any Prince or State in Enmity with either Nation, to fit their Ships in the Ports of either of the said Parties, or to sell their Prizes there, or purchase

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purchase any Thing but such Victualling as shall be necessary for their going to the next Port of that Prince from whom they have their Commissions.

XVI. The Ships of both Parties being laden, and forc'd by Storm into the Ports of each other shall not be oblig'd to unlade their Goods, or to pay any Duty; but a small Part of the Lading may be taking out, with Leave, to purchase Victualling, and that Part only be liable to the Duty.

XVII. It shall be lawful for all the Subjects of the Queen of *Great Britain*, and of the Most Christian King, to sail with their Ships, with all Liberty and Security, to any Ports or Places of Countries in Enmity with either of them, and to trade with the Ports and Places of those who are Enemies to both, or either Party; not only from those Places to neutral Ports, but also from one Place belonging to an Enemy, to another Place of an Enemy, without any Disturbance; and every Thing found on Board shall be deem'd Free, tho' belonging to Enemies of either Party, Contraband Goods excepted.

XVIII. This Liberty of Navigation and Commerce, shall extend to all Kinds of Merchandizes, except those that follow in the next Article, signify'd by the Name of Contraband.

XIX. Under this Name of Contraband or prohibited Goods, shall be comprehended Arms, Great Guns, Bombs, Fire Balls, &c. and all other War-like Instruments.

XX. These Merchandizes which follow, shall not be reckon'd among prohibited Goods; that
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is to say, all Sorts of Cloths, and all other Manufactures of Wooll, &c. (as in the 4th Article of the former Treaty with *France*) and other Goods not work'd into the Form of Instruments for War; but shall be reputed amongst free Goods, as likewise all other Merchandizes not mention'd in the preceding Article.

XXI. To the End all Manner of Quarrels may be prevented, in Case either Party should be engaged in War, the Ships of each Party shall be furnish'd with Passports, expressing the Names of the Ships, &c. and have Certificates of their Lading, that it may be known whether there be any Contraband Goods on Board, and that the Ships truly belong to the Subjects of one of the Princes.

XXII. The Ships of the Subjects of both their Majesties, coming to the Sea-Coasts within the Dominions of either of them, not being willing to put into Port, or sell their Cargoes, shall not be oblig'd to give an Account of their Lading, unless they are suspected, upon good Grounds of having Contraband Goods.

XXIII. And in Case of a manifest Suspicion, they shall be oblig'd to produce their Passports and Certificates.

XXIV. But in Case the Ships of the Subjects of either Party, either on the Coasts or the High Seas, shall meet with the Men of War of the other; such Men of War shall remain out of Cannon-Shot, and shall send a Boat only with two or three Men, to see the Passport of such Ship, whereupon she shall have free Passage.

XXV.

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XXV. But Merchant-Ships going to a Port at Enmity with the other Party, shall be oblig'd to exhibit, either on the Seas or in Port, not only their Passports, but Certificates of their Lading.

XXVI. And if one Party, on exhibiting the said Certificates, shall find any Contraband Goods, it shall not be lawful to break up the Hatches of the Ship, or to open the Chests, &c. unless the Lading be landed in the Presence of Officers of the Admiralty, &c. and it shall be unlawful to sell the same, 'till due Processes and Confiscation be obtain'd.

XXVII. On the contrary it is agreed, that what shall be found laden by the Subjects of either Party, on any Ship belonging to the Enemy of the other, the whole, altho' it be not prohibited Goods, may be confiscated, as if it belong'd to the Enemy himself; except those Goods and Merchandizes shipp'd before the Declaration of any War, &c. which shall not be liable to Confiscation, but shall be restored to the Proprietors; but if the same be Contraband Goods, they shall not be afterwards carry'd to the Ports of the Enemy.

XXVIII. And for the Security of the Subjects of both their Majesties against Privateers, all the Commanders of their Ships, and their Subjects, shall be forbid doing any Damage to the other Side; and if they act contrary, to make Satisfaction and Reparation, and be also punish'd.

XXIX. For this Cause, all Commanders of Privateers, before they receive their Patents, shall be obliged to give sufficient Security, &c. that they will render Satisfaction for all Damages
and

and Injuries, which they shall commit during their Courses at Sea, contrary to this Treaty, or the Edicts of either Party, &c.

XXX. Both Parties shall shew a mutual Favour in all their Dominions to the Subjects of each other, in the same Manner as if they were their own Subjects, and give necessary Orders that Justice be duly administr'd.

XXXI. Whensoever the Embassador, or Resident of each of their Majesties, shall complain of the Injustice of any Sentence, Care shall be taken that the same be review'd and re-examined in their respective Councils, and that Right be done every Complainant within the Space of three Months.

XXXII. A Suit being commenc'd between the Captors of Prizes and Reclaimers of the same, and Sentence given in Favour of the Reclaimers, the same shall be put in Execution, on giving Security, notwithstanding the Appeal of the Captors; but this is not to be observ'd when Judgment is given against the Reclaimers.

XXXIII. In Case Ships are driven on Rocks upon the Coasts of either Party, and are there broken to Pieces and wreck'd, the Goods and Merchandizes sav'd shall be faithfully restor'd to the Proprietors, they paying only the Expence of Salvage; saving at the same Time, the Rights and Customs of each Nation.

XXXIV. It shall be free for the Subjects of each Party to employ such Advocates, Attorneys, Notaries, Solicitors, and Factors, as they shall think fit

XXXV. And that Commerce may be more securely and freely follow'd, it is agreed, that
neither

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neither the Queen of *Great Britain*, nor the Most Christian King, shall receive any Pirates and Robbers into any of their Ports, Havens, &c. but shall cause them to be apprehended and punish'd. And all Ships, and Goods taken by them, altho' they are sold, shall be restor'd to the lawful Owners, &c. and Indemnification shall be thereupon.

XXXVI. It shall be lawful for the Ships of War, and Privateers of both Parties, to carry their Prizes where they please, without paying any Thing, or being arrested, or search'd, when they enter any Ports belonging to either of their Majesties; and they shall have Liberty to depart to the Place assign'd in their Commissions; but no Shelter shall be allow'd to such as have made Prize upon the Subjects of either Party.

XXXVII. Neither of their Majesties shall permit, that the Ships or Goods of the other be taken on the Coasts, or in the Ports of their Dominions, by Ships of War of any Prince or State whatsoever; and if such a Thing should happen, both Parties shall unite their Force for Reparation of the Damage.

XXXVIII. If any Inconveniencies happen on either Side, concerning the Observance of this Treaty, the Friendship shall not immediately thereupon be broken, but the Treaty shall subsist; and proper Remedies for removing the Inconveniencies shall be procured.

XXXIX. If a Captor use Torture upon the Master of a Ship, or the Ship's Crew, the Ship and Merchandizes, shall be forthwith releas'd, and set entirely Free; and such Persons as shall be found Guilty of the Crime, shall suffer the most severe Punishments. *A*

A Treaty of Commerce between her Majesty Queen Anne, and Philip King of Spain, concluded at Utrecht, the 28th of November 1713, by which a former Treaty made in the Reign of King Charles the Second, is particularly ratified and confirm'd, being as follows :

I. **I**T is agreed, that there shall be, between the Crowns of *Great Britain* and *Spain*, a good and perfect Amity, as well by Land as by Sea ; and between the Lands, Countries, &c. belonging unto, or under the Obedience of either of them.

II. That neither of the said Princes, nor their Subjects, shall, on any Pretence, do, or procure to be done, any Wrong or Injury to the other, in any Place of the one or the other, but shall treat one another with Friendship ; and may, by Water and by Land, securely pass into the Countries, Dominions, Cities, Towns, &c. accusom'd to Commerce, and there trade, buy and sell, with any Person or Persons whatsoever.

III. That the Kings of *Great Britain* and *Spain* shall take Care that their Subjects abstain from all Violence ; and if any Injury shall be done on either Side, against this Treaty, Letters of Reprisal shall not therefore be given, until such Times as Justice is sought in the ordinary Course of Law : But if Justice be denied or delay'd, and no Satisfaction given within six Months, then may issue out Letters of Reprisal and Marque.

IV. That between the King of *Great Britain* and the King of *Spain*, and their Subjects, there shall be free Trade and Commere, as well

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well upon Sea as on Land, in all and every their Dominions and Territories, without Safe-Conduct or particular Licence; and the Subjects of either Party, may enter into any Port, with their Ships laden or empty, and there buy and sell, provide themselves with Provisions, and also may repair their Ships, and from thence freely depart without Molestation, paying the usual Duties; and saving to either Side the Laws and Ordinances of their Country.

V. That for the Merchandizes which the Subjects of *Great Britain* shall buy in *Spain*, no new Customs, Tolls, Subsidies, or other Duties shall be taken; and in the buying and selling of their Merchandizes, they shall enjoy the same Privileges which are allow'd to the natural Subjects of *Spain*; and may lade their Ships, which shall not be detain'd in Port upon any Pretence, after the Customs paid, neither shall any Factor be questioned after their Departure.

VI. And to the End the Duties may be known, Tables and Lists thereof shall be put up at the Doors of the Custom-Houses, &c. of all Cities, Towns and Ports, where Customs are usually paid: And any Officer, &c. receiving more than mentioned in those Tables, shall suffer three Months Imprisonment, and pay three Times the Value of the Sum received.

VII. That it shall be lawful for the Subjects of the King of *Great Britain*, to bring out and carry into any Parts of *Spain*, where hitherto Commerce hath been us'd, all Kinds of Cloths, and Manufactures of *Great Britain*, or of the Plantations, &c. thereto belonging, and which shall be bought by *English* Factors

tors on this Side the Cape of *Good Hope*; and to trade there, without declaring to whom, or for what Price they sell their Merchandize, or being molested, paying the Rights and Tributes; and what Lading they shall not bring to Land, they may detain and carry away in their Ships, without paying any Duty. And Prize-Goods shall be taken for Goods and Merchandize of *Great Britain*.

VIII. That the Subjects of *Great Britain* may bring and carry to all Parts of *Spain*, any Fruits and Commodities of the *East-Indies*, produc'd from the *English* Plantations, or Factories there, with the like Privileges as are allow'd to the States of *Holland*, in the Treaty of *Munster* concluded in the Year 1648.

IX. That the said Subjects of *Great Britain*, trading, buying and selling in any of the Kingdoms or Territories of *Spain*, shall have and enjoy all the Privileges and Immunities, which are granted to the *English* Merchants that reside in *Andaluzia*, and which are hereby confirm'd.

X. That the Ships, or any other Vessels that shall belong to the King of *Great Britain*, or his Subjects trading to *Spain*, shall not be visited by the Judges of Contraband, or by any other Officers; nor shall any Soldiers be put on board the said Vessels; nor may they be searched in any Port by the Officers of the Customs, until the Lading is carry'd on Shore which they resolve to disembark and discharge in the said Port; nor shall the Captain, Master, or any of the Ship's Company, be imprison'd or detain'd on Shore. If the whole Lading of such Ships is

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to be discharg'd in any Port, the Entry shall be made in the usual Manner; and if after Entry made, any Goods shall be found in the Ship, more than what are contain'd in the said Entry, eight working Days shall be allow'd, that the Goods conceal'd may be enter'd; and if in that Time an Entry be not made, such Goods shall be confiscated, but not any others; tho' no other Punishment shall be inflicted; and when the Ships are re-laden, they may freely go out again.

XI. That the Ships of either Party, or their Subjects, entering any Ports, &c. of the one or the other, and discharging any Part of their Goods, and being consign'd with the rest to other Places, shall not be obliged to register or pay for any other Merchandize than what is unladen; nor be compell'd to give any Security, unless in the Case of Felony, or Debt, &c.

XII. That if any the Subjects of the King of *Great Britain*, shall land any Goods or Merchandizes in any of the Ports of his Catholick Majesty, and having enter'd them, and paid the Customs, shall afterwards desire to transport them to any other Place, they may do it without paying any other Custom Duty. And in Case the Subjects of either Party shall unlade Goods or Merchandizes, in any City or Town, and having paid the Duties, shall not be able to put them off, they may remit them to any other City, &c. without Molestation, or paying any farther Rights than what were due at their Entry.

XIII. That it shall be lawful for the Subjects of *Great Britain* and *Spain*, to anchor their

their Ships in the Roads or Bays of either Kingdom, without being constrain'd to enter into Port; and when they cast Anchor, or enter the Ports, they shall not be molested or visited, shewing their Passports: And if the said Ships be not bound to any Enemy's Port, and carrying thither Contraband Goods, the said Subjects shall return to Sea freely with their Ships, so as they do not break Bulk, or expose any Thing to Sale.

XIV. If any Ships, belonging to the Subjects of the one or the other Party, shall enter into any Bay, or in the open Sea shall be met by the Ships of War of the said Kings, or Privateers; the said Ships shall not come within Cannon-shot, but shall send their Long-Boat or Pinnace, to the Merchant-Ship, and only two or three Men to examine the Passport, &c.

XV. And if any prohibited Goods shall be exported from the Dominions of either Party, such prohibited Goods only shall be confiscated, and not the other Goods; neither shall any other Punishment incur to the Delinquent, unless he shall carry out of the Dominions of *Great Britain*, the Corn, Wooll, or Fuller's Earth of the said Kingdom; or shall carry out of *Spain*, any Gold or Silver; in either of which Cases, the Laws of the respective Countries are to take Place.

XVI. That it shall and may be lawful for the Subjects of both Princes, to have Access to the Ports of the one and the other, and there to remain, and depart again with their Vessels for Trade; and for Ships of War, arriving by Stress of Weather, to repair their

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Ships, or to furnish Provisions, not exceeding the Number of eight such Ships, and not continuing longer than they shall have just Cause. And when an unusual Number of Men of War, by Accident arrive near unto any Port, it shall not be lawful for them to come into the said Ports or Havens, without Leave; and in such Case, they shall presently acquaint the Governor with the Cause of their coming; nor shall they remain there longer than he shall think convenient.

XVII. That neither the said King of *Great Britain*, nor the King of *Spain*, by any Mandate, shall detain any Merchant, Master of a Ship, Pilot, or Mariner, for his respective Service, or any Ships, Merchandize, &c. without a particular Agreement thereunto, provided this shall not interrupt the ordinary Course of Justice.

XVIII. That the Merchants and Subjects of both Princes, their Factors and Servants, and also their Ships, Masters, or Mariners, may in all Places, carry and use all Kind of Arms defensive and offensive, according to Custom.

XIX. That the Captains, Officers, and Mariners of the Ships belonging to the Subjects of either Party, shall not commence an Action, or trouble their own Ships, or any Persons belonging to them, in the Dominions of the other, for Wages, &c. under any Pretence; nor may they put themselves into the Service or Protection of either Prince; but if any Controversy happens, the composing thereof shall be left to the Consul of their Nation, subject to Appeal.

XX. And

XX. And to the End all Impediments may be remov'd ; and whereas it is thought convenient, that the Laws, by which the Importation of Cloth into *Flanders*, &c. is prohibited, shall be revok'd, and that the Impositions upon Woollen Manufactures imported (except the ancient Tribute) shall be void ; and that the *English* Merchants trading to any of the said Provinces, shall enjoy all the Privileges agreed and given by the ancient Treaties between the Kings of *England* and Dukes of *Burgundy*, and Governors of the *Low Countries* : It is agreed, that Deputies shall be nam'd by the King of *Great Britain*, to meet the Ministers of *Spain*, and treat and conclude hereupon, and also to agree upon farther Immunities, suitable to the present State of Affairs, for the Security of Trade and Commerce.

XXI. The Subjects and Inhabitants of both Kingdoms, shall with all Security sail to, and traffick in, all the Countries which shall be in Peace, Amity, or Neutrality, with the one or the other.

XXII. And they shall not be disturbed in that Liberty, by the Ships or Subjects of the said Princes respectively, by Reason of Hostilities which may be hereafter, with any Kingdoms or States now in Friendship or Neutrality with them.

XXIII. And in Case that within the Ships of either Party shall be found any Merchandize herein after mention'd, being contraband and prohibited, they shall be confiscated ; but other allow'd Commodities shall in no wise be seiz'd.

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XXIV. It is declar'd, that under the Name of Contraband Goods, shall be comprehended all Fire-Arms, &c. and other warlike Instruments ; and Transportation of Soldiers, &c. shall not be permitted.

XXV. Under the Name of forbidden Merchandize, shall not be comprehended Wheat, Rye, Barley, or other Grains, or Pulse, Salt, Wine, Oil, &c. but they shall remain free, and may be transported unto the Towns of the Enemies, unless such Towns are besieg'd and block'd up.

XXVI. It is also agreed, that whatsoever shall be found laden by the Subjects of either Party aboard the Ships of the Enemies of the other, though it be not forbidden Merchandize, shall be confiscated, with all Things else on board the said Ships.

XXVII. That the Consul, which hereafter shall reside in any of the Dominions of the King of *Spain*, for the Protection of the Subjects of *Great Britain*, shall be nam'd by the King of *Great Britain*, and shall exercise the full Power as any Consul ever had ; and in like Manner the *Spanish* Consul shall enjoy the same Authority in *England*.

XXVIII. That the King of *Spain* shall provide, that the Subjects of *Great Britain* shall not be aggriev'd, contrary to the Laws of Commerce, and that none shall be disturb'd on Account of Conscience ; and the King of *Great Britain* shall take Care that the Subjects of *Spain* be not molested for their Consciences, or against the Laws of Commerce.

XXIX. That the Subjects of one Kingdom in the Dominions of the other, shall not be compell'd

compell'd to sell their Merchandizes for Brass Metal, or exchange them for other Coin against their Will, or receive the Payment for the same in other Species than what they agreed for

XXX. That the Merchants of both Nations, and their Factors, Servants and Families, and also Masters of Ships, Pilots and Mariners, may remain securely in the Dominions of either of the said Kings, and enjoy their proper Houses, Warehouses, and Magazines for their Merchandizes, for the Time agreed, without any Impediment.

XXXI. And shall employ such Advocates, Agents and Solicitors, as they think fit; and they shall not be constrain'd to shew their Books of Account, unless it be to give Evidence for the avoiding of Law-Suits. And the Subjects of either Kingdom may keep their Books of Account in what Language they please; and shall not be subject to any Inquisition.

XXXII. That in Case the Estate of any Person shall be seiz'd by any Court of Justice, within the Dominions of either Party, and any Effects happen to be in the Hands of the Delinquent, belonging to the Subjects of the other, the said Estate shall not be confiscated, but shall be restor'd.

XXXIII. That the Goods and Estates of the Subjects of the one King, that shall die in the Dominions of the other, shall be preserv'd for the lawful Heirs; the Right of a third Person being saved.

XXXIV. That the Estates of the Subjects of *Great Britain*, dying intestate in *Spain*, shall

be inventoried by the *English* Consul, and deposited in the Hands of two or three Merchants, nam'd and appointed by him, for the Benefit of the Proprietors and Creditors ; the like to be observ'd in *England* towards the Subjects of *Spain*.

XXXV. That a 'decent Burial-place shall be granted to bury the Bodies of the Subjects of *Great Britain*, who shall die in *Spain*.

XXXVI. If any Difference happen hereafter, between the King of *Great Britain* and the King of *Spain*, the respective Subjects of each Party shall have Notice thereof, and six Months Time given to transport their Effects.

XXXVII. All Goods and Rights concealed, &c. which have not, by a legal Condemnation, been brought into the *Exchequer* at the Time of concluding this Treaty, shall remain at the free Disposal of the Proprietors.

XXXVIII. That the People and Subjects of both Kingdoms shall enjoy in the Lands, Ports, &c. of the one or the other, the same Privileges which have been or shall be granted by either Kings to the Most Christian King, the States General, or any other Kingdom or Country, as fully as if they were particularly named.

XXXIX. In Case any Dispute shall happen on either Side, concerning these Articles, the Complaint being presented and prov'd, Damages shall be forthwith repaired, &c.

XL. It is agreed, That the Kings of *Great Britain* and *Spain*, shall faithfully observe and keep all and singular the Capitulations in this present Treaty, &c.

The

The preceding Treaties with *France* and *Spain*, containing numerous *Articles*, I have here concisely abridg'd them, that they might not exceed due Bounds. And this last Treaty, we may take Notice contains a great many very good and excellent Provisions, for the mutual Advantage of the Subjects of each Nation; tho' we are but little the better for them, with Respect to our Trade to the distant Dominions of *Spain*, where they seem at present, the best thereof, not at all to be observed.

In this Treaty with *Spain*, there are some other Articles agreed upon; one of which is, *That all Losses of the Subjects of either Crown, sustained in the Beginning of the late War, shall be made good, and Restitution made*: How far this Article has been neglected on the Side of *Spain*, our Merchants can best testify. There were likewise several *separate Articles* agreed to, the chief whereof are revoked by a Treaty concluded with that Kingdom by his late Majesty King *George* the First.

Also by a private Treaty with *Spain*, concluded by his said Majesty, we had farther Privileges granted in Trade, especially of sending certain Ships to the *South-Sea*, &c. But this profitable Trade of late, has been much interrupted, by the continual Seizures and Depredations of the *Spanish Privateers*.

C H A P. XVII.

Of the English Plantations abroad, and our Trade there.

A Plantation or Colony, is a Place whither People are sent to dwell, or a Company of People transplanted from one Place to another, with an Allowance of Land for their Tillage, and encourag'd by Immunities, for the Good of themselves and the State to which they belong.

When the Commonwealth and Empire of the *Romans*, grew to be very populous, and idle Persons would have stirred Commotions, then the Plantation of Colonies of People in other Countries became necessary to be practised, and Means also to set the People on Work, or to employ them in the Wars, to govern the quieter at home. But it is the Part of Princes in general to see Plantations made, for two other principal Reasons; that is, to convert the Inhabitants or Neighbours to Christianity; and to the End such Advantages may be enjoyed, as the Land and Seas do afford.

In Case a Nation or People happen to be expelled out of their own Land, they may seek void Places and Wastes in some other Country; and the immediate possessing such Plantations creates a Property against all Persons, but he that hath Empire there: Also some learned *Civilians* are of Opinion, that if there

there be a Defart or Barren Ground, the same ought to be granted to Strangers, upon their Request; for they commit no Offence who inhabit and manure a Part of the Land, that lies neglected and unoccupied.

And where Persons coming into any Territories, and having planted in a Plantation there, if before they can reap the Fruits of their Labour, the Necessities of Life are wanting, by the Laws of Nature they may force a Subsistence from a Neighbour-Planter; and the Reason is this, because Subsistence belongs to every Man, unless he has merited to lose the Life which he seeks to preserve. The written Laws are in some Measure conformable to this; by which, if Provisions begin to fail in a Ship at Sea, those Persons which laid in particular Stores for the Voyage, are obliged to bring the same out openly for the Benefit of all.

Our Plantations abroad, are chiefly Islands in *America*; and the Islands of *Jamaica* and *Barbadoes*, with some others, are much frequented by unfortunate Persons, who have so great Advantages in Trade, that by Industry and Application, a present Misfortune is oftentimes attended with a future Happiness, by accumulating great Wealth from the Products of these foreign Colonies. The *English* Plantations in general contain *Jamaica*, *Barbadoes*, *Virginia*, *Maryland*, *New-England*, *New-York*, *Carolina*, *Bermudas*, and the *Leeward Islands*, &c. And there is lately a Settlement in *America*, called *Georgia*, much encouraged,

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The Plantation Islands being originally gotten by Conquest, or by some of the King's Subjects going in Search of some Prize, and planting themselves there, the King is not restrained to rule them by any particular Laws, but may govern them as he will: But it has been held, that the Laws and Customs by which the People of any Island or Plantation were govern'd before the Conquest thereof, do bind them until new Laws are given; for there is a Necessity that the former Laws should be in Force, 'till new are obtain'd, and even then some of their old Customs may remain, as they do in *Barbadoes*, &c. Though in Case of an uninhabited Country newly found out by *English* Subjects, all Laws in Force in *England*, are immediately in Force there. 3 *Mod. Rep.* 160. 2 *Salk.* 411.

The *Isle of Man* and *Ireland*, are Part of the Possessions of the Crown of *England*; yet retain their antient Laws: And *Jamaica* was not govern'd by the Law of *England* after it was conquer'd, 'till new Laws were made; for they had neither Sheriffs or Counties, they were only an Assembly of People which are not bound by our Laws or Statutes, unless particularly mentioned therein: Besides they in *Jamaica* have Power to make Laws, by which our general Laws may be altered by theirs in Particulars. In *Barbadoes* all Freeholders are subject to Debts, and esteem'd but as Chattels, till the Creditors are satisfied, and then the Lands descend to the Heir; but the Law is otherwise here, which shews that tho' that Island is Parcel of the Possessions of *England*, yet 'tis not govern'd by the Laws made,

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made here. By the Laws of *Virginia*, Negroes are saleable as Chattels; but the Laws of *England* do not extend to *Virginia*. 2 *Salk.* 411. 666. 4 *Mod.* 226. See now Statutes 7 & 8 *W.* 3. and 5 *Geo.* 2.

If in any Action for Rent upon a Lease of Lands in *Jamaica*, &c. there be a foreign local Issue, it may be tried where the Action is laid; and for that Purpose the Plaintiff may enter a Suggestion on the Roll, that such a Place in such a County is next adjacent; and then it shall be try'd in the *King's Bench* by a Jury from such Place, according to the Laws of that Country, which may be given in Evidence. In this Case it was said, there may be a Law in *Jamaica* against Bonds; but that will not confine the Action of Debt upon Bonds made there to that Country: And Action of false Imprisonment has been brought here against a Governor of *Jamaica* for an Imprisonment there, and the Laws of the Country given in Evidence. 2 *Salk.* 651. *Mod. Cases* 195.

In the Year 1661, the then Governor of *Jamaica*, called the first Assembly which was held in that *Island*, and thereby made Laws for raising a publick Revenue by a Tax on Strong Liquors, towards upholding of the Government there, which Laws were indefinite and perpetual. Afterwards the King granted Power to another Governor to choose his own Council, and with Consent of the major Part of them to frame general Assemblies of Freeholders, according to the Usage of other Plantations, and with their Consent to make Laws suitable to those of *England*, which
I should

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should remain in Force for the Space of two Years, and no longer, unless approved by his Majesty; and the Assembly granted the like Revenue out of Strong Liquors, but to continue but two Years. It being here a Question, referred by the Privy Council to several of the Judges, whether this last Law had totally laid aside the former? It was resolv'd, That the last Council having Power to make Laws only for two Years, it did not repeal the perpetual Law made before, but suspended its Power during that Time, and not longer. *Raym. Rep.* 397.

King *Charles* the Second, by Letters Patents, dated the 28th of *October*, in the 32d Year of his Reign, appointed Sir *Richard Dutton* to be Captain General and chief Governor of *Barbadoes*, by Virtue of which he appoints twelve Men to be of the King's Council during Pleasure; and the said Governor had Power by the Advice of that Council, to appoint and establish Courts, Judges and Justices, Copies of which Establishments to be sent hither for the King's Assent; with Authority likewise to make a Deputy-Governor, &c. And Sir *John Witham* being constituted by him Deputy-Governor of the said Island in his Absence, was charged with Male-Administration, in that he did not take the usual Oath for observing of Trade and Navigation; that he assum'd the Title of Lieutenant-Governor, and Decrees made in Court were altered by him in his Chamber. Whereupon, by Order of the Governor and Council, he was committed to Prison, where he remain'd some Time.

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An Action of Assault and false Imprisonment, being brought by the Deputy-Governor; it was said for him, that the Causes of his Commitment (if any) were such which they ought not to meddle withal, because they relate to his Misbehaviour in Government, for which he is answerable to the King alone, &c. To which it was answered, that he being committed by Order of Council, until he was brought to a general Court of *Oyer and Terminer*, by which Court he was again committed 'till he should be discharged by due Course of Law; it ought to be presumed his Commitment was legal. Judgment was given in *B. R.* for the Plaintiff *Witham*, but that Judgment was afterwards reversed in the House of Lords. 3 *Mod.* 160, 161.

All that shall be made Governors of the Plantations, shall before their Entrance into their Government, take an Oath to do their utmost that the Acts of Parliament passed concerning the said Colonies and Plantations be duly observ'd, so far as appertains to the said Governors respectively; and upon Complaint to the King, and Proof made before his Majesty, or such as he shall appoint, by the Oaths of two or more credible Witnesses, that any of the Governors, or Commanders in chief, have neglected to take the said Oath, or been wittingly negligent in doing his Duty accordingly; such Governor so offending shall be removed from his Government, and forfeit the Sum of One Thousand Pounds. Stat. 12 *Car.* 2. *cap.* 18. and 7 & 8 *W.* 3.

By the 11 & 12 *W.* 3. *cap.* 12. if any Governor, Lieutenant-Governor, Deputy-Governor,

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nor, or Commander in chief of any Plantation or Colony within his Majesty's Dominions beyond the Seas, shall be guilty of oppressing any of his Majesty's Subjects in their respective Governments, or of any other Crime or Offence, contrary to the Laws of this Realm, or in Force within their Governments, &c. it shall be enquired of, heard and determined in the Court of *King's Bench* in *England*, or before such Commissioners, and in such County of this Realm, as the King shall appoint, and by good and lawful Men of the same County: And the like Punishments shall be inflicted, as are usual for such Offences here in *England*.

And by the Act 7 & 8. *W. 3. cap. 22.* All Laws, By-Laws, Usages or Customs in Practice, in any of the Plantations, which are repugnant to any Laws already made here, or to this Act, or any other Law hereafter to be made in this Kingdom, relating to the said Plantations, are declared null and void. And all Places of Trust in the Courts of Law, or relating to the Treasury, in any Island, Colony or Plantation, belonging to *England*, shall be in the Hands of the Native-born Subjects of *England*, *Ireland*, or of the said Islands: Also Persons that claim any Right or Property in any Islands, or Tracts of Land on the Continent of *America*, by Charter or Letters Patent, shall not at any Time alien, sell, or dispose of the same to any other Persons than the natural born Subjects of *England* or *Ireland*, &c. without the King's Licence in Council first had and obtained; and all Governors appointed by any such Proprietors, shall

shall be allowed and approved of by his Majesty, and take the Oaths enjoined to be taken by the Governors or Commanders in Chief in any other Colonies and Plantations, under the same Penalty they are liable to.

The Statute 12 Car 2. cap. 18. enacts, That no Alien may be a Merchant, or Factor in any of the Territories and Plantations belonging to *England*, in *Asia*, *Africa*, or *America*, on Pain to lose all his Goods; one Third to the King, another Third to the Governor of the Plantation, and the other Third to the Person suing in any of the King's Courts there: And if any Governor of the Plantations shall suffer any foreign-built Vessel to load or unload Goods, before a Certificate is produc'd, that the Owner or Owners are not Aliens, and Examination made, such Governor shall be put out of his Place.

Goods and Merchandize shall not be imported into, or exported out of any of the Plantations which belong to his Majesty, in any other Ships but those belonging to the People of *England* or *Ireland*, &c. and of which the Master and three Fourths of the Mariners are *English*, on Forfeiture of all the Goods, and the Ship or Vessel, with its Furniture; a third Part whereof to the King, another Third to the Governor where any such Default shall be, and the other third Part to him that will seize or sue for the same, &c. And where any Abatement or Privilege is given in the Book of Rates to Goods imported or exported in Shipping built in *England*, *Ireland*, *Wales*, &c. or any the King's Territories in *Asia*, *Africa*, and *America*, it is

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to be understood, that the Master and three Fourths of the Mariners be also *English*; and where that is required, they shall be such during the whole Voyage, unless in Case of Sicknefs, Death, or being taken Prisoners, to be proved by the Oath of the Master.

And no Sugars, Tobacco, Cotton-Wooll, Indico, Ginger, Fustick, or other Dying Wood, of the Growth of any *English* Plantations in *America, Asia* or *Africa*, shall be transported to any Place, other than to some *English* Plantation, or to *England, Ireland, Wales*, or Town of *Berwick*, on Pain to forfeit them, or the Value, and the Ship with her Furniture, one Moiety to the King, the other to him that seizes or sues for the said Forfeiture. And for every Vessel which shall set out from *England, Ireland, &c.* for any of the said Plantations, Bond shall be given, with one Surety, to the chief Officers of the Custom-House of the Place from whence she sails, of 1000*l.* if the Ship be less than the Burthen of One hundred Tons; and of 2000*l.* Penalty if of greater Burthen; that if the said Vessel load any of the said Commodities at such Plantations, it shall bring them to some Port of *England* or *Ireland, &c.*

Also for all Ships coming from any other Port or Place to those Plantations, the Governors before the Ships be permitted to load, shall take Bond as aforesaid; that they shall carry them to some other *English* Plantations, or to *England, Ireland, &c.* And every Ship taking on board any of the said Goods before Bond given, or Certificate produced from some Custom-House in *England, &c.* of such Bonds being

being there given, shall be forfeited; and the said Governors shall twice in every Year return true Copies of all such Bonds to the Officers of the Customs in *London*.

By the 15 *Car. 2. cap. 7.* in Regard his Majesty's Plantations beyond the Seas, are inhabited and peopled by Subjects of the Kingdom of *England*: For the maintaining a greater Correspondence and Kindness between them, and keeping them in a firmer Dependance upon it, and rendering them yet more beneficial and advantageous, in the further Employment and Increase of *English* Shipping and Seamen, vent of the *English* Woollen and other Manufactures and Commodities, &c. and making this Kingdom a Staple, not only of the Commodities of those Plantations, but also of the Merchandizes of other Countries and Places, for the supplying of them, and it being the Usage of other Nations to keep their Plantation Trade to themselves.

It is enacted, that no Commodity of the Growth or Manufacture of *Europe*, shall be imported into any of the King's Plantations in *Asia*, *Africa* or *America*, but what shall have been shipped in *England*, *Wales*, or Town of *Berwick*, and in *English* built Shipping, and whereof the Master and three Fourths of the Mariners are *English*, and which shall be carried directly thence to the said Plantations on Pain to forfeit the same, and if imported by Water, the Vessel also; one Third to the King, another to the Governor of such Plantation, if there seized or sued for, else that Third to the King likewise; the other Third to him who will seize or sue for the same in

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any of the King's Courts in such Plantations, or any Court of Record in *England*.

But nevertheless it shall and may be lawful to ship and lade in such Ships, so navigated as aforesaid, in any Part of *Europe*, Salt for the Fisheries of *New England* and *Newfoundland*, and in the *Maderas* and *Azores*, Wines of the Growth of the said Islands; and in *Scotland* or *Ireland* to take in Servants, or Horses, and all Victuals of the Growth or Production of the said Places, to transport them to the said Plantations.

Every Person or Persons importing or bringing by Land any Goods or Commodities whatsoever into any of the said Plantations, shall deliver to the Governor of such Place, or the Officer by him appointed, within twenty four Hours, their Names and Surnames, with a true Inventory of the said Goods: And no Vessel coming to any such Plantation, shall lade or unlade any Goods or Commodities, 'till the Master have made known the Arrival of the Vessel, her Name, his own Name and Surname, and shall have shewn that she is an *English* built Ship, and navigated as before mentioned, or produce such Certificate, and have delivered an Inventory of her Lading, with the Places where her Goods were taken in, on Pain of forfeiting the Ship and Goods of the Growth or Manufacture of *Europe* not laden in *England*, *Wales*, or Town of *Berwick*, to be recovered and divided as abovesaid.

And if any Officers of the Customs in *England*, &c. shall give any Warrant for, or suffer any Sugar, Tobacco, Ginger, Cotton-Wooll, Indico, Speckle-Wood, or *Jamaica* Wood, Fustick, or other Dying Wood of the Growth of
any

any of the Plantations aforesaid, to be carried into any other Country, until they have been first unladen and put on Shore in some Port or Haven in *England*, or *Wales*, &c. they shall forfeit their Places, and the Value of such Goods; one half to the King, the other to the Informer.

And forasmuch as Planting and making Tobacco in this Kingdom, is a Discouragement of the *English* Plantations in the Parts beyond the Seas, &c. Therefore it is ordained, that all Persons who shall set, plant, or sow any Tobacco in *England*, *Wales*, *Guernsey*, or *Jersey*, &c. shall forfeit 10 *l.* for every Rod of Ground planted, and so proportionably, besides the Penalty of 12 *Car. 2. cap. 34.* one third Part to the King. another to the Poor of the Parish, the other third to the Informer: And Justices of Peace, &c. on Information thereof, shall cause it to be destroyed; Persons resisting the Act to forfeit 5 *l.* and be committed to Gaol, 'till they enter into Recognizance with Sureties not to do the like again.

This Act shall not hinder planting Tobacco in Physick Gardens of either University, or any other private Garden for Physick or Chirurgery, so as the same exceed not half a Pole in any one Garden.

By 22 & 23 *Car. 2. cap. 26.* every Ship or Vessel, that shall take on Board any Sugar, or other Commodities, at any of the *English* Plantations, 'till Bond be given as directed by the Statute 12 *Car. 2.* or a Certificate produc'd from the Officers of some Custom-House in *England*, that such Bond hath been given there; or which shall carry the said Goods to any Country or Place, contrary to the Tenor of

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such Bond; the said Ship or Vessel, with all her Guns, Ammunition, Furniture, and Lading to be forfeited; one Moiety to the King, the other to him that will seize or sue for the same, in any of the said Plantations, or in any Court of Admiralty of *England*, &c.

But the Act 25 *Car. 2. cap. 7.* seems to have taken off these Penalties and Forfeitures, which Ordains, that if any Vessel shall come to any of the King's Plantations to ship Sugar, Tobacco, Cotton-Wooll, Indico, Ginger, Fustick, or other Dying Wood of their Growth, and Bond shall not be first given with one Surety to bring the same to *England*; there are to be answered to the King several Duties, on the said Goods and Commodities, to be paid where and to whom shall be appointed in the said Plantations, before Lading thereof, under such Penalties to the Officers, and upon the Goods, as for Non-payment, or defrauding the King of his Customs in *England*: And in Case any Persons liable to the Payment of these Duties, shall not have Moneys to answer the same; the Officers shall take and accept instead thereof, a Proportion of the Commodities to be shipped, as shall amount to the Value, according to their current Price in the same Plantations.

The 7 & 8 *W. 3. cap. 22.* Reciting the Acts for Incouragement of the Navigation of this Kingdom, and better securing and regulating the Plantation Trade, &c. wherein great Abuses had been committed; for Remedy thereof enacted, that no Goods or Merchandizes, shall be imported or exported to, or from any Plantation abroad, or from one Port or Place, to another Port in the same, the Kingdom

Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick*, in any Ship but what shall be built in *England*, *Ireland*, or the said Plantations, and wholly owned by the People thereof, and navigated with the Master, and three Fourths of the Mariners of the said Places, under Pain of Forfeiture of Ship and Goods, &c. as by former Statutes; except Ships taken and condemned as Prize, to be navigated as aforesaid, and foreign built Ships for a certain Time employed by the Commissioners of the Navy in bringing Naval Stores, &c. from the Plantations for the King's Service.

No Ship shall be deemed as a Ship of the Built of *England*, *Ireland*, *Wales*, &c. or any of the King's Plantations in *America*, to be qualified to Trade to any of the said Plantations, until the Proprietor of such Ship shall Register the same, and one or more of the Owners make Oath, *Where the Ship was built, who are the present Owners thereof, and that no Foreigner, directly or indirectly, hath any Share, Part or Interest therein.* Which Oath is to be administred by the Collector and Comptroller of the Customs of the Port, to which the Ship belongs, if in *England*, *Ireland*, *Wales*, or *Berwick*; but if in any *American* Plantation, then by the Governor, with the principal Officer of his Majesty's Revenue there. And which said Oath being attested by the Governor, or Custom-house Officer respectively, and having been registred by them, shall be delivered to the Master of the Ship, for the Security of her Navigation, and a Duplicate transmitted to the Commissioners of the Cust-

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toms at *London*, and there entered in a General Register: The Vessel that Trades to or from the Plantations, without such Proof made as here directed, shall be liable to such Prosecution and Forfeiture, as foreign Ships would be for trading thither. And no *Ship's Name registred* shall be changed without registering the Ship a new, under the like Penalties; also upon Sale of any Share, such Sale shall be acknowledg'd by Indorsement on the Certificate of the Register.

All Ships, whether the King's or Merchants Ships, lading or unlading Goods at any of the Plantations aforesaid, and the Masters and Commanders thereof, shall be subject to the same Rules, Visitations, Searches, Penalties, and Forfeitures, as Ships and their Ladings and the Commanders and Masters are subject and liable to in this Kingdom, by Virtue of 14 *Car. 2. cap. 11.* And the Officers for collecting his Majesty Revenue, and inspecting the Plantation-Trade, in the said Plantations, shall have the same Power and Authority for visiting and searching of Ships, taking their Entries, seizing Goods prohibited, or for which Duties ought to be paid, as are provided for the Officers of the Customs in *England*, by the said Act 14 *Car. 2.* and to enter Houses and Warehouses, to search after and seize such Goods; and all Persons assisting in the Conveyance, or Concealment of the Goods, or in resisting any of the said Officers in Performance of their Duty, and the Boats and other Vessels employ'd therein, shall be liable to the like Penalties, as are provided in Relation to prohibited and uncustom'd Goods in this Kingdom;

Kingdom; and the Officers subject to the same Penalties for Corruptions, Frauds, &c. as here.

In Cases where the Governors or Officers of the Customs in the Plantations shall have reasonable Ground to suspect that any Certificates produced, are false and counterfeit, viz. that the Certificate of having given Security in *England* is false, in that Case the said Governor or Officers shall require and take sufficient Security there for the Discharge of the Plantation Lading in *England, Wales,* or Town of *Berwick*; and in Case there shall be Cause of Suspicion, that the Certificate of having discharged the Plantation Lading in this Kingdom is false, they shall not vacate the Security given in the Plantations, 'till they shall be informed from the Commissioners of the Customs in *England*, that the Matter of the Certificate is true: And if any Person shall counterfeit, or raise any Cocket, Certificate, Return, or Permit, for any Vessel or Goods, or knowingly make Use thereof, such Person shall forfeit the Sum of 500 *l.* and the Cocket, &c. so falsified, shall be invalid and of no Effect.

When Bonds are taken in the said Plantations, pursuant to the aforementioned Act, made 22 & 23 *Car.* 2. the Sureties therein shall be Persons of known Residence and Ability in the Plantations; and the Conditions of the said Bonds shall be within eighteen Months after the Date thereof (Danger of the Seas excepted) to produce Certificates of having landed the Goods therein mention'd in one of his Majesty's Plantations, or in *England, Wales,* or *Berwick*; otherwise such Bonds, or Copies thereof

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thereof attested under the Hand and Seal of the Governor or Commander in Chief, to whom they were given, shall be in Force, and allow'd in all Courts.

And it shall not be lawful on any Pretence whatsoever, to put on Shore in the Kingdom of *Ireland*, any Merchandize of the Growth or Product of any of his Majesty's said Plantations; unless the same have been first landed in *England*, *Wales*, or Town of *Berwick*, and paid the Rates and Duties wherewith they are chargeable, under the Penalty of Forfeiture of Ship and Goods, three Fourths to the King, the other Fourth to him that shall sue for the same: But it is provided, that if any Ship laden as aforesaid, shall by Stress of Weather be stranded, or by Leakiness, or other Disability, be driven into any Port of *Ireland*, and unable to proceed on her Voyage, her Goods and Merchandize may be put on Shore, but shall be deliver'd into the Custody of the chief Officer of the Customs there, 'till the said Goods shall be put on board some other Ship or Vessel, to be transported to some Port in *England*, &c.

All Penalties and Forfeitures, not in this Act particularly disposed of, shall be one Third to the King, one Third to the Governor of the Plantation, and the other Third to the Person suing for the same in any Court at *Westminster*, or in *Ireland*, or the Courts of Admiralty in any Plantation belonging to *England*: And where any Question shall arise concerning the Importation or Exportation of any Goods, the Proof shall lie upon the Owner or Claimer: And on any Actions, Suits, and Informations,

formations, that shall be commenced in the said Plantations, relating to the Duties or Forfeitures by Reason of any unlawful Importations or Exportations, none shall be of any Jury but such as are Natives of *England*, or *Ireland*, or of the Plantations; and in such Actions, the Offences may be laid to be in any Precinct or Division of the said Plantations, where such Offences are alledg'd to be committed.

By the 3 & 4 *Anne*, cap. 8. Any Native of *England*, or *Ireland*, may Ship in any Port of *Ireland* in *English* built Shipping, whereof the Master, and three Fourths of the Mariners at least, be *English* or *Irish*, any white or brown Linnen Cloth which shall be of the Manufacture of *Ireland*, and transport the same into any Plantation, Territory, or Place belonging to *England*, and there traffick with, and vend the same. But no Ship coming to any such Plantation or Place, shall break Bulk, until Notice given to the Governor thereof, or Person appointed by him, of the Arrival of such Ship, her Name, and of the Master; and shall have deliver'd to the said Governor or other Person a true Invoice of the Lading, with a Certificate from the chief Officer of the Port in *Ireland* where laden, of the Particulars thereof, the Names and Abodes of the Exporters, and of two Persons, who have made Oath before such chief Officer, that the said Linnen is of the Manufacture of *Ireland*; and 'till the Master of the Ship hath taken Oath before the Governor, &c. That the Goods are the same Goods took on board by Virtue of the Certificate; nor until such Ship hath been search'd.

And

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And in Case the Master shall break Bulk, before such Notice given, Certificate produced, Oath and Search made as aforesaid; or if on such Search, any Woollen Manufacture, (necessary Apparel excepted) or Linnen not laden in *England*, nor of the Manufacture of *Ireland*, shall be found, the Ship and Furniture, and all Goods found therein, shall be forfeited, a Third to her Majesty, another Third to such Governor of the Plantation, if there seiz'd, inform'd against, or sued for, (if not, that Third also to her Majesty) the other Third to him that sues for the same. And Ships coming from *Ireland* to any such Plantation, shall be subject to the like Rules, Searches and Penalties, as Ships coming thither from *England* are.

If any Ship laden in *England* for the Plantations, shall put into any Port in *Ireland*, and take on board such *Irish* Linnen, the like Certificate and Oaths shall be made; and then the Ship, her Master, and Lading, shall be liable to such Searches, and Penalties, &c. only, as they were before the passing this Act, Suits for Offences are to be brought in a twelve Month after Discovery of any Offence. See the Act 3 *Geo. I. cap. 21.*

The Act 6 *Ann. cap. 30.* recites, that Her Majesty by Proclamation, dated *June* the 18th, 1704, settled the Currency of Foreign Coins, in the Colonies and Plantations of *America*, for avoiding the Inconveniencies that had arisen in Trade from the different Rates, the same Species of Foreign Silver Coin did pass at in the said Plantations; which Proclamation was as follows.

*A Proclamation for ascertaining the Currency of
foreign Coins in the Plantations.*

WE having had under our Consideration the different Rates at which the same Species of Foreign Coins do pass in our several Colonies and Plantations in *America*, and the Inconveniencies thereof, by the indirect Practice of drawing the Money from one Plantation to another, to the great Prejudice of the Trade of our Subjects; and being sensible, that the same cannot be otherwise remedied, than by reducing of all Foreign Coins to the same current Rate within all our Dominions in *America*: And the principal Officers of our Mint having laid before us a Table of the Value of the several Foreign Coins which usually pass in Payments in our said Plantations, according to their Weight, and the Assays made of them in our Mint, thereby shewing the just Proportion which each Coin ought to have to the other, which is as followeth, *viz.* *Seville* Pieces of Eight, old Plate, seventeen Penny-weight, twelve Grains, four Shillings and Six-pence; *Seville* Pieces of Eight, new-Plate, fourteen Penny-weight, three Shillings and seven Pence Farthing; *Mexico* Pieces of Eight, seventeen Penny-weight twelve Grains, four Shillings and Six-pence; *Pillar* Pieces of Eight, seventeen Penny-weight twelve Grains, four Shillings and Six-pence three Farthings; *Peru* Pieces of Eight, old Plate, seventeen Penny-weight twelve Grains, four Shillings and five Pence, or thereabouts; Cross Dollars, eighteen Penny-weight, four Shillings and Four-pence

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three Farthings; Ducatoons of *Flanders*, twenty Penny-weight and twenty one Grains, five Shillings and Six-pence; Ecu's of *France*, or Silver *Lewis*, seventeen Penny-weight twelve Grains, four Shillings and Six-pence; Crusadoes of *Portugal*, eleven Penny-weight four Grains, two Shillings and Ten-pence Farthing; three Guilder Pieces of *Holland*, twenty Penny-weight and seven Grains, five Shillings and Two-pence Farthing; old Rix Dollars of the *Empire*, eighteen Penny-weight and ten Grains, four Shillings and Six-pence; the Halfs, Quarters and other Parts in Proportion to their Denominations, and light Pieces proportionable to their Weight. We have therefore thought fit, for remedying the said Inconveniencies, by the Advice of our Council, to publish and declare, that from and after the first Day of *January* next ensuing the Date hereof, no *Seville*, *Pillar*, or *Mexico* Pieces of Eight, though of the full Weight of seventeen Penny-weight and a half, shall be accounted, received, taken or paid within any of our said Colonies or Plantations, as well those under Proprietors and Charters, as under our immediate Commission and Government, at above the Rate of six Shillings *per* Piece current Money, for the Discharge of any Contracts or Bargains to be made after the Time aforesaid; the Halfs, Quarters, and other lesser Pieces of the same Coins to be accounted, received, taken and paid in the same Proportion: And the Currency of all Pieces of Eight of *Peru*, Dollars, and other foreign Species of Silver Coins, whether of the same or baser Alloy, shall stand regulated, according to their Weight and Fineness,

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ness, in Proportion to the Rate before limited and set for the Pieces of Eight of *Seville*, *Pillar*, and *Mexico*; so that no foreign Silver Coin of any Sort be permitted to exceed that Proportion upon any Account whatsoever. And we do hereby require and Command, &c. (the Observance of the Directions herein, &c.)

For the better enforcing the due Execution of the said Proclamation throughout all the said Colonies and Plantations, and more effectual remedying the Inconveniencies thereby intended to be remedied; It is enacted, That if any Person within any of the said Plantations, shall for the Discharge of any Contract to be hereafter made, account, take, or pay any the Species of Foreign Silver Coins mentioned in the above Proclamation, at any higher Rate, such Person shall suffer six Months Imprisonment without Bail, and forfeit 10*l.* for every Offence; one Moiety to the Queen, her Heirs and Successors, the other to the Person suing, to be recovered by Action of Debt, Bill, Plaint, or Information, in any Courts of Justice within the said Plantations, where the Offence is committed.

But nothing in the Proclamation or this Act, shall compel any Persons to receive any of the said Species of Foreign Silver Coin at the Rates in the Proclamation mentioned: Nor shall any Thing herein contained, restrain her Majesty from regulating and settling the several Rates of the said Foreign Coins in any of the said Plantations, in such other Manner as she shall judge necessary, by Proclamation to be issued, or from giving her Royal Assent to any Law hereafter

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hereafter made in any of the Plantations, for settling the Rates of such Coins there.

By 8 *Geo. 1. cap. 18.* reciting divers Acts, by which certain Commodities therein enumerated, of the Growth, Production, or Manufacture, of any of the *British* Plantations in *America, Asia, or Africa*, are restrained to be imported into this Kingdom, or to some other of the said Plantations, and under the Securities and Penalties therein particularly mentioned; since the making of which Statutes, Copper Ore not being an enumerated Commodity is produced in the Plantations, and carried to Foreign Markets in *Europe*, without being first brought into this Kingdom, &c. Therefore it is enacted, that all Copper Ore, shall be under the like Securities and Penalties, restrained to be imported in this Kingdom, as is provided for other Goods particularly enumerated by any former Laws.

The Statute 4 *Geo. 2. cap. 15.* ordains, that it shall be lawful to import into *Ireland*, from his Majesty's Plantations in *America*, all Goods and Merchandizes of the Growth or Manufacture of the said Plantations, not being enumerated in any Act of Parliament; (the Goods excepted are Sugars, Tobacco, Cotton-Wooll, Indico, Ginger, Speckle-Wood, or *Jamaica* Wood, Fustick, or other Dying Wood; Rice, Molasses, Beaver Skins, and other Furs; Copper Ore, Pitch, Tar, Turpentine, Masts, Yards, and Bowsprits) the Act 7 & 8 *W. 3.* notwithstanding. But the Goods and Merchandizes imported, shall be in *British* Shipping, whereof the Master and three Fourths of the Mariners at least are *British*.

By

By the 5 *Geo. 2. cap. 7.* the Houses, Lands, Negroes, and other Hereditaments, and real Estates, within any of the said Plantations, belonging to any Person indebted, shall be liable to and chargeable with all just Debts, Duties, and Demands of what Kind soever, and shall and may be Assets for Satisfaction thereof, in like Manner as Real Estates are by the Law of *England* liable to the Satisfaction of Debts due by Bond, or other Specialty; and shall be subject to the like Remedies, and Proceedings in any Court of Law or Equity, in any of the Plantations, for seizing, extending, selling or disposing of the same, towards satisfying such Debts, Duties and Demands, in the same Manner as personal Estates in the Plantations are.

And for the more easy Recovery of Debts in his Majesty's Plantations and Colonies in *America*, in any Suit brought in the said Plantations, for any Debt or Account wherein any Person residing in *Great Britain* shall be party, such Debts may be proved here on Oath or Affirmation, before any Mayor, or Chief Magistrate of the City, or Town where or near which the Person making such Oath, &c. shall reside, and being certified under the Common Seal of such City or Town, or the Seal of Office of the Mayor, &c. which shall be of the same Force, as if the Persons had appeared and sworn or affirmed the Matters contained in any such Affidavit or Affirmation *viva voce* in open Court, or upon a Commission.

In all Suits depending or brought, by or in Behalf of the King, in any of the Plantations, for any Debt or Account, his Majesty may

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prove his Debts and Accounts, and Examine his Witnesses, by Affidavit or Affirmation in like Manner as any Subject.

By 6 *Geo. 2. cap. 13.* The Planters of the Sugar Colonies in *America* having fallen under great Discouragements, so as to be unable to improve or carry on the Sugar-Trade upon an equal Footing with the Foreign Sugar Colonies, without some Advantage and Relief given to them from *Great Britain*; it is enacted, that there shall be paid to his Majesty, for all Sugars and Paneles of the product of any Plantations in *America*, not under the Dominions of his Majesty, which shall be imported into any of his Majesty's Plantations, the Sum of 5 s. for every hundred Weight; and for all Rum or Spirits of Foreign Produce, 9 d. for every Gallon; and for Molasses or Syrups of such Foreign produce 6 d. per Gallon.

Upon the Importation of any such Goods into any of the Plantations belonging to the Crown of *Great Britain*, an Entry shall be made with the proper Officers of the Customs, &c. and the Duties thereby granted are to be paid down in ready Money by the Importers before landing the said Goods: And in Case any of the said Commodities shall be landed before due Entry, and the Duties paid, or without a Warrant for landing the same, signed by the proper Officer; such Goods or the Value, shall be forfeited, and they may be seized by the Governor, or by Warrant of any Magistrate, or by any Custom-house or Excise Officer; and every such Offence may be prosecuted in any Court of Admiralty in the Plantations, or Court of Record where the said Offence

Offence is committed; and the Forfeiture shall be divided, One third Part for the Use of his Majesty, for the Support of the Government of the Plantation, One third Part to the Governor, and the other third Part to the Informer.

By this Act, Sugars, Paneles, Syrups, Molasses, and Rum and Spirits of *America*, not being of the Growth and Product of the *English* Sugar Colonies, are prohibited to be imported into *Ireland*, but such only as are shipped in *Great Britain*, in Ships navigated according to Law, &c.

The Statute 5 *Geo. 2. cap. 22.* Enacts, that no Hats or Felts shall be exported out of any *British* Plantations, to any other *British* Plantation or Place, on Penalty of 500 *l.* and Forfeiture of the Goods; and Persons aiding and assisting therein, shall forfeit 40 *l.* Any Persons may seize Hats and Felts found on Ship-board, &c. and carry them to the King's Warehouse: And Commissioners of the Customs, &c. in the Plantations permitting Entries to be made of such Hats for Exportation to forfeit 500 *l.* This Statute also regulates the Trade of Felt-making in the Plantations, as to Apprentices and Journeymen, &c. And no Person inhabiting in the said Plantations shall retain in the said Art of Hat or Felt-making, any Negro, upon pain to forfeit 5 *l.* for every Month.

By the 8 *Geo. 2. cap. 19.* An Act made 3 *Geo. 2. cap. 28.* For granting Liberty to carry Rice from *Carolina* to any Part of *Europe* South of Cape *Finisterre*, in Ships navigated according to Law, shall be continued until the Twenty-

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ninth of *September* One thousand Seven hundred and Forty two.

And whereas his Majesty by Letters Patent bearing Date the ninth Day of *June*, in the fifth Year of his Reign, granted to the Trustees for establishing the Colony of *Georgia* in *America*, Seven undivided Parts, (the whole into Eight equal Parts to be divided) of all those Lands in that Part of *South Carolina*, which lie from the most Northern Stream of the *Savannah*, all along the Sea-Coast unto the most Southern Stream of the *Altamaha*, and Westward from the Heads of the said Rivers to the *South-Sea*, with the Islands opposite to the Eastern Coast, within twenty Leagues of the same: And his Majesty by the said Letters Patent, did erect the said Lands into one independent Province, by the Name of *Georgia*; It is now enacted, that it shall be lawful for his Majesty's Subjects, in any Ships belonging to *Great Britain*, and navigated according to Law, that shall clear outwards in any Port of *England* for the Province of *Georgia*, to load Rice in the said Province, and carry the same to any Port Southward of *Cape Finisterre*, under the Restrictions limited in the Act 3 *Geo.* 2. cap. 28.

And the Officers appointed by the Trustees of *Georgia*, are impowered to do all Things there, which may be done by Virtue of the said Act, by the Officers of the Ports in *Carolina*. The Ships concerning which Province of *Carolina*, shall proceed directly without carrying the Rice to any other of his Majesty's Plantations in *America*; first taking out a Licence from the Commissioners of the Customs,
upon

upon a Certificate from the Collector and Comptroller of the Port, where such Licence shall be desired, that Bond is given, that no enumerated Goods shall be taken on Board such Ship or Vessel at *Carolina*, or any of the Plantations, unless for the necessary Provisions of the Ship in their Voyage.

After Landing the Rice at some Port of *Europe* to the Southward of *Cape Finisterre*, the Ship is to proceed for *Great Britain* before she returns to any of the Plantations, and produce a Certificate of having landed and discharged the said Rice, &c. and the Master producing the Licence to the Officers of the Port where Bond was given, they shall Demand so much as the Half Subsidy payable to his Majesty for the Rice shipped in *Carolina* shall amount unto, which would have remained, in Case the said Rice had been first imported in *Great Britain*, and afterwards re-exported; which not being paid within thirty Days, the Bond shall be forfeited, &c.

A Letter or Power of Attorney to receive the Rents of Plantations, and to Let the same.

TO all People to whom these Presents shall come, *A. B.* of &c. sendeth Greeting. Whereas the said *A. B.* is seized in his Demesne, as of Fee, of and in one Plantation in the Island of *Jamaica*, called or known by the Name of &c. together with the Slaves, Horses, Mills, Coppers, and other Appurtenances thereunto belonging: Now know ye, That the said *A. B.* hath constituted, authorized, and appointed, and by these Presents doth constitute,

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tute, authorize and appoint *C. D.* of, &c. and hereby give to him full Power and Authority, in his Name, to enter into and upon the said Plantation, whereof he the said *A. B.* is now seized as aforesaid; and to have, receive, and take the Rents, Issues, and Profits of the same, with the Apputenances, to his Use; and to lease, demise, lett and set to such Person or Persons as he shall think fit, all his Plantation aforesaid, Tracts and Seats of Land, Negroes, Horses, Coppers and Mills whatsoever, in the said Island of *Jamaica*, or any Part thereof, for such Term or Number of Years, not exceeding, &c. and for and under such yearly and other Rents, Covenants, Proviso's, and Agreements, as he thinks convenient; or otherwise to manage, occupy, or employ the same, &c. as to him the said *C. D.* shall seem best and most for his Benefit and Advantage. And from Time to Time, to receive and take the Revenues and Profits of the said Plantation, Lands, and Premisses above-mentioned so demised, and let; and to use and take all lawful Methods, by Action, Distress or otherwise, for the obtaining and recovering the Rents, Issues and Profits of all or any Part of the said Premisses, or to compound for the same, as he shall think fit. In Witness, &c.

Another Letter of Attorney for the Management and receiving the Produce of Plantations.

TO all People, &c. and the said *A. B.* doth hereby make, ordain, constitute and appoint, and in his Stead and Place put the said *C. D.* his true and lawful Attorney, for him,
2
and

and in his Name, and to his Use, from Time to Time, to ask, require, demand, sue for, recover and receive, all and every Sum and Sums of Money, Sugars, Debts, Goods, Wares and Merchandizes, due, owing or belonging, or which shall grow due or belonging to him the said *A. B.* from any Person or Persons whatsoever in the Island of *Barbadoes*; and on Non-payment, or Non-delivery thereof or of any Part thereof, for him and in his Name, to use and take all proper Methods, according to the Laws and Customs of the said Island, for the obtaining and Recovery of the same; and upon Payment or Delivery thereof to his said Attorney, to release and discharge the Person and Persons so paying and delivering the same. And he the said *A. B.* doth hereby further authorise and impower the said *C. D.* to do, execute and perform all other lawful and reasonable Act and Acts, Thing and Things whatsoever, for him, and in his Name, or otherwise, touching and concerning the Management or Disposal of all or any Part of his Estate, real or personal within the said Island of *Barbadoes*, and for the recovering and receiving the Profits and Produce thereof, or of any Part or Parcel thereof, or any other Matter or Thing whatsoever, as he himself might or could do, if he were personally present to do the same. And one or more Attorney or Attorneys, under him, to make, substitute, and appoint, for all or any the Purposes aforesaid; hereby ratifying, confirming, and holding firm and Stable whatsoever his said Attorney, or his Substitute or Substitutes, by and under him appointed, for all or any the

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Purposes aforesaid, shall do, execute and perform, or cause to be done, executed and performed, in and about touching or concerning the Premises. In Witness, &c.

Statutes concerning Naval Stores imported from the Plantations, &c.

BY the Act 3 Ann. cap. 10. Every Person that shall import directly from the *English* Plantations in *America*, in Ships which may lawfully trade there, manned as by Law required, any of the Naval Stores herein after mentioned, shall have as a Premium the several Rates following : For good Tar, and Pitch per Ton 4 *l.* Rosin or Turpentine 3 *l.* Hemp Water rotted, 6 *l.* and for Masts, Yards and Bowsprights 1 *l.* a Ton; to be paid by the Commissioners of the Navy, who are to make out Bills to be paid in Course on Certificates of the Chief Officers of the Customs in any Port, where such Stores shall be imported, and upon Certificate produced to the said Officers, under the Hand and Seal of the Governor, Lieutenant Governor, Collector of Customs, and Naval Officer of Plantations, or any two of them, That the Naval Stores were of the produce of the Plantation from whence brought; as likewise upon Oath of the Master of the Ship, that the same were laden in such Plantations. And the pre-emption shall be offered to the Commissioners upon Landing the said Stores; and if in twenty Days after, the Commissioners do not Contract for the same, the Importer may otherwise dispose thereof.

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No Persons in the Colonies of *New Hampshire, Massachusetts Bay, Rhode Island, Providence Plantation, Narraganset, King's Province, and Connecticut in New England, and New York and New Jersey*, shall cut, fell or destroy any Pitch, Pine or Tar Trees, not being within any Fence, under the Growth of twelve Inches Diameter, three Foot from the Earth, on Penalty of 5 *l.* upon Proof made thereof by the Oath of one Witness before a Justice of Peace nearest such Place, one Moiety of the said Penalty to her Majesty, and the other to the Informer.

And no Person in the said Colonies shall willingly set Fire to any Woods, or Forests, wherein are any Pitch, Pine or Tar Trees prepared for making Pitch or Tar, without giving Notice to the Owners of the said Trees, who had prepared them, or to a Justice of Peace there, on Pain of forfeiting 10 *l.* for every Offence, to be recovered in such Manner and distributed as aforesaid.

The Importation of such Naval Stores shall be subject to the same Regulations and Restrictions, as to Shipping and Navigating thereof, Security to be given for importing, and subject to the like Penalties, as the Importation of Sugar, Tobacco, Cotton, &c. from the Plantations are liable to.

And by 9 *Ann. cap. 17.* No Person within the Colonies of *New Hampshire, the Massachusetts Bay, &c.* before mentioned, may cut, fell, or destroy any white or other Pine Tree, fit for Masts, such Tree being of the Growth of twenty-four Inches diameter, and upwards, at twelve Inches from the Ground, unless it be the

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the Property of any private Person, on Forfeiture of 100*l.* one Moiety to the Crown, the other to the Informer : Prosecution to be commenc'd within six Months, and the Penalty levied by Warrant under the Hand and Seal of a Justice of Peace there.

The 5 *Geo. 2. cap. 11. sect. 16.* ordains, That no Certificate shall be made out in order to allow the Premium mentioned in the Act 3 *Ann. cap. 10.* for any Pitch or Tar imported from his Majesty's Plantations in *America*, 'till such be freed from Dirt or Dross, or for Tar that is not fit to be used for making Cordage, and shall not be freed from Dross and Water; and unless the Pitch and Tar be clean, good, Merchantable and well conditioned : And it shall be lawful for the Officers of the Customs before they make any such Certificate, to examine the Pitch by opening the Heads of Barrels, sawing the Staves in the Middle, and breaking the Barrels, or so many of them as they shall find sufficient to make a Proof, or by such other Means as shall be thought proper, to discover whether the said Pitch be Merchantable, &c. and search the Tar, to find out if it be well conditioned and fit for making Cordage.

But Custom-Officers shall not take any Fee or Reward, for examining or delivering such Pitch or Tar, or other Naval Stores, with Respect to the Premium, or for making a Certificate in order to the receiving thereof, on Pain of Loss of Office, and also forfeiting 100*l.*

By the 8 *Geo. 1. cap. 12.* Certificates by Officers of the Customs in any Port of this Kingdom,

Kingdom, for Tar imported from the Plantations, &c. to entitle the Importer to any Premium, are not to be made out, unless the Certificate of the Governor, &c. required by 3 Anne, do express, that it has appeared to them by the Oath of the Owner or Maker of the Tar, (taken before a Justice of Peace of the Colony where such Tar shall be made) that the Tar was made from green Trees, prepared for that Purpose after the following Manner, viz. That when such Trees were fit to bark, the Bark thereof was stripp'd eight Fee, or thereabouts, up from the Root of each Tree, a Slip of the Bark of about four Inches in Breadth having been left on one Side of every Tree; and that the Tree being so barked had stood, during one Year at the least, and was not cut down before for the making of Tar.

And for the Preservation of white Pine Trees, for the Mastings of the Royal Navy, it is enacted, That no Persons within the Colonies of *Nova Scotia*, *New Hampshire*, *Masachusetts's Bay*, and Province of *Main*, *Rhode-Island*, &c. shall cut any white Pine Tree, not growing in any Township, or the Bounds thereof, without his Majesty's Licence, on Pain that every Person so offending, or aiding or assisting therein, or in drawing away the said Pine Trees after they shall have been so cut, shall forfeit for every white Pine Tree of the Growth of twelve Inches diameter, and under, at three Feet from the Earth, 5*l*. For every such Tree from twelve to eighteen Inches, 10*l*. from eighteen to twenty-four Inches, 20*l*. and from twenty-four Inches and upwards,

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upwards, 50*l.* which Penalties shall be sued for within six Months after the Offence, by Complaint or Information, on the Oath of one or more Witnesses, before the Judge of the Admiralty or his Deputy, in the Colony where such Pine Tree shall be cut, &c. a Moiety whereof to go to the Crown, the other to the Informer; and not being paid in twenty Days after Conviction, such Judge, &c. may by Warrant cause the same to be levied by Distress and Sale of the Offender's Goods; and where no sufficient Distress can be found, he shall be committed to Prison, not exceeding twelve Months, &c. or till he shall pay the Penalty.

And after such Payment, the Offender shall find Security for his Good Behaviour for three Years. Also it is declared, that all white Pine Trees, Masts or Logs made from such Trees, which shall be cut or felled without such Licence, shall be forfeited and seized for the Use of the Crown. So much of the Act 9 *Ann. cap. 17.* as relates to the cutting or destroying white Pine Trees, and the Penalty incurred thereby, is by this Statute repealed.

The Statute 2 *Geo. 2. cap. 35.* enacts, That the Premiums for Importation of Naval Stores from the *British Colonies or Plantations in America*, shall be as follows, *viz.* for all Masts, Yards and Bowsprights, *per Ton*, 1*l.* for clean good Merchantable well conditioned Tar, clear of Dross or Water, and in every Respect fit for making Cordage, 2*l.* 4*s.* for such clean good Merchantable Pitch, not mixed with Dirt or Dross, 1*l.* and for clean and good Tur-

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Turpentine, 1 *l.* 10 *s.* *per* Ton: And as a farther Encouragement for making of Tar, Persons importing Tar made from Trees prepared according to the Directions of the Act 8 *Geo.* 1. shall receive as a Premium 4 *l.* *per* Ton for the same; on Cetrificate and Oath, that the said Tar was made without any Mixture of any other Tar therewith.

If any Pitch, Tar, Turpentine, Masts, Yards or Bowsprights, be exported, the Exporter thereof shall produce to the Collector of the Customs a Receipt from the Treasurer of the Navy, &c. that he hath repaid the Premiums, by Virtue of this Act; or on Failure thereof, such Naval Stores shall not be exported. The Treasurer of the Navy shall charge himself with the Money so received from the Exporter, and account for the same: And if any Persons fraudulently export Naval Stores, without repaying the Premium, they shall be forfeited, and double their Value; Half to the King, and Half to the Prosecutor, to be prosecuted in any of the Courts at *Westminster*, &c.

And by this Act a Premium is to be paid for Trees of twelve Inches Diameter, and upwards, fit for Masts, Yards, &c. imported from *Scotland*, of 1 *l.* *per* Ton; on producing the proper Certificates, that they were of the Growth and Produce of *North Britain*, &c. Persons clandestinely importing any Trees fit for Masts, &c. of foreign Growth, and demanding or receiving the Premium, shall forfeit 100 *l.* and the Ship or Vessel wherein imported, with all her Tackle, &c.

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The Treasurer and Commissioners of the Navy, &c. are to enquire of the Naval Stores embezill'd, and may empower Persons to search after them, as Justices of Peace in Cases of Felony ; and being under 20 s. Value, shall fine and imprison the Offenders, the Fine not exceeding double the Value. *Vide* 1 *Geo.* 1. *cap.* 25. and 9 *Geo.* 1. *cap.* 8.

Other Statutes relating to the Plantations.

There have been large Sums of Money given by divers Acts of Parliament, not only for the settling and establishing Colonies and Plantations abroad ; but also for repairing Losses to Persons disturbed therein.

By the 9 *Ann.* *cap.* 23. The Sum of One hundred and three thousand Pounds, was granted and appropriated to be distributed amongst the Inhabitants of *Nevis* and *St. Christopher's*, who had resettled there after the Invasion and Depredations of the *French* in the Year 1705, according to the Losses that should appear to the Commissioners for Trade and Plantations, by the Return of a Commission for that Purpose issued ; so that the Sufferers might have Shares of the Money, according to their respective Losses.

And the Act 5 *Geo.* 1. *cap.* 32. enacted, That all the Proprietors of Plantations ; and Inhabitants of the Islands of *Nevis* and *St. Christopher's*, who on the Commission issued and return'd by Virtue of the 9 *Ann.* *cap.* 23. appear'd to be Sufferers in the said Islands, and who by themselves, their Agents, or Representatives, had resettled, and resided in
either

either of the said Islands, in any Plantations, Houses, Dealings, or Occupations there, before the 25th of *December 1711*, and made Proof thereof by a certain Time; should be deemed to be resettled within the Intent of the said Act, and be entitled to a proportionable Share of the Bounty of 103,000 *l.* aforesaid, and all other Benefits and Advantages given by the said Act and 10 *Ann. c. 34.* to any Sufferers by Reason of the Invasion there.

The 6 *Geo. 2. cap. 25.* enacts, That there shall be applied out of the Money arisen by Sale of Lands in *St. Christopher's*, the Sum of 10,000 *l.* to the Trustees for establishing the new Colony of *Georgia*. By 8 *Geo. 2. cap. 23.* a further Sum of 26,000 *l.* and by 9 *Geo. 2. cap. 34.* the Sum of 10,000 *l.* more is appropriated to the same Use: Also by the 10 *G. 2. cap. 17.* the Sum of 20,000 *l.* further out of the Land Tax.

See more of Plantations, under Piracy and Customs, &c. Vol. i.

C H A P. XVIII.

Of Factors, Agents, and Supercargoes.

A Factor is a Merchant's Agent, residing beyond the Seas, or in any remote Parts, constituted by Letter or Power of Attorney, to sell Goods and Merchandize, and otherwise act for his Principal; and one Factor may be concerned for several Merchants, and they shall all run a joint Risque of his Actions: Factorage is the Wages or Allowance, paid or made to such a Person by the Merchant. A Supercargo, is a Person employ'd by Merchants to go a Voyage, and oversee the Cargo, and dispose of it to the best Advantage.

In Commissions granted to Factors at this Time, it is common to give the Factor Power in exprefs Words to dispose of the Merchandize, and deal therein as if it were his own; by which the Factor's Actions will be excused, though it turns to the Principal's Loss. But a bare Commission to a Factor to sell and dispose of Goods, is not a sufficient Authority for the Factor to trust any Person, or to give a farther Day of Payment than the Day of Sale of the Goods; for in this Case, on Delivery of the same, he ought to receive the Money: And by the general Power of doing as if it were his own, he may not trust out to an unreasonable Time, *viz.* beyond one, two, or three Months, &c. the usual
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Time

Time allowed for the Commodities disposed of; if he does, he shall be answerable to his Principal out of his own Estate.

In Case of an Authority given to one, to sell any Thing as a Factor, in the due Execution of it, he ought presently upon the Sale, to have and receive a *quid pro quo*, otherwise he does not well perform such Authority to him given: And if a Merchant deliver to his Factor certain Goods, to merchandize for him beyond Sea, for his best Profit; here he ought to sell them for the best Profit of his Principal, and by Intendment of Law, to render a full and plenary Account for the same; and in Performance of the Trust reposed in him, he should either return the Commodity again to the Merchant who delivered it, or bring the Money with him for which they were sold, and deliver it to his Principal. 1 *Bullst. Rep.* 103.

A Merchant delivers Goods to his Factor *ad Merchandizand*, he cannot sell them upon Credit, but for ready Money, unless he hath a particular Commission so to do; for if he can find no Buyers, he is not answerable: And if they are *Bona peritura*, and can't be sold for Money upon the Delivery, the Merchant must give him Authority to sell upon Trust. If the Goods are burned, or the Factor is robbed, without his own Default, he is not liable; but in this Case of perishable Goods, it was not alledged that he could not sell them for ready Money; and the Sale itself was made beyond Sea, where the Buyer was not to be found. And as a Master is not bound by the Contract of the Servant, with-

out his Consent, or at least the Goods coming to his Use; so neither shall a Factor have Power to sell, without ready Money, except his Orders are particular for that Purpose. 2 *Mod.* 100, 101.

It has been adjudg'd by *Holt*, C. J. that every Factor of common Right ought to sell for ready Money; but if he be a Factor in a Sort of Dealing or Trade, where the Usage is for Factors to sell on Trust, there if he sells to a Person of good Credit, who afterwards becomes Insolvent, the Factor is discharged: 'Tis otherwise, if it be to a Man notoriously discredited at the Time of the Sale. But if there be no such Usage, and he upon the general Authority to sell, sells upon Trust, let the Buyer be ever so able, the Factor is only chargeable; for in that Case, he having gone beyond his Authority, there is no Contract created between the Vendee and the Factor's Principal; and such Sale is a Conversion in the Factor. *Pasch.* 13 *W.* 3.

If a Man employs another as his Factor, to sell Cloth or other Goods, and he sells the same on Credit, and before the Money is paid the Factor dies indebted by Specialty more than his Assets will pay; this Money shall be paid to the Principal, and not to the Administrator of the Factor, as Part of his Assets; but thereout must be deducted what was due to the Factor for Commission: For a Factor is in Nature only of a Trustee for his Principal. Decreed in Equity, *Hill.* 1708. 2 *Vern.* 638.

In Case a Factor shall give Time to a Man for Payment of Money contracted on Sale of

his Principal's Goods, and after the Time is elapsed, vend Merchandizes of his own to the same Person for ready Money, (leaving the Principal's unreceived) and then such Person shall become insolvent, the Factor in Equity and Honesty should indemnify his Principal; as he ought not to dispense with the Non-payment of the Principal's Money after it became due, and accept of Payment of his own only, to another Man's Loss: But he is not compellable by the Common Law. *Molloy* 440.

And if any Factor sell unto a Man certain Goods of another Person's Account, either by themselves or among other Things, and gives not Advice to his Principal of the Sale of the said Goods, but afterwards having more Dealings with the same Man, he becomes Insolvent; the Debt for the Goods so sold, the Factor shall be answerable for, because he gave no Advice to the Owner of the Sale of the said Goods in convenient Time, and it is as if he had disposed of those Goods to a Man contrary to the Commission given unto him; for the Salary of Factorage bindeth him thereto. Also if a Factor by Commission of a Merchant to buy a Commodity for his Account, with the said Merchant's Money, or by his Credit, and the Factor giveth no Advice of it to his Principal, but sells the same Goods again for his own Benefit; the Merchant shall recover this Benefit of the Factor, according to the Custom of Merchants, and his Factor shall likewise be amerced for the Fraud.

If a Factor by Order or Commission of his Principal, buys any Goods above the Price

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limited to him, or they be not of that Sort, Goodness or Kind, as by the Authority they ought to be; this Factor is to keep the same for his Account proper, and the Merchant may disclaim the buying of them: The like he may do, if the Factor having bought a Commodity according to his Commission, shall ship the same for another Place, than he hath Commission to do; but in such Case if the Price of the Goods riseth, and the Factor thereupon fraudulently ladeth them for some other Port, to take the Advantage thereof, the principal Merchant may recover Damages of the said Factor, upon Proof made of it. A Factor selling Merchandize under the Price limited unto him by his Principal, he is to make good the Loss or Difference of the Price, unless he can give a sufficient Reason for his so doing. *Lex Mercat.* 82.

And there is a Difference between a Factor and a Servant in this, That a Factor is created by Merchants Letters, and taketh Salary or Provision of Factorage; but a Servant is by his Master entertained, some receiving Wages yearly, and others without Wages: A Factor is bound to answer the Loss, which happeneth by over-passing or exceeding his Commission; whereas a Servant is not, but may incur his Master's Displeasure; Factors therefore must be very careful to follow the Commissions given them very orderly and punctually. And Factors deal most commonly for divers Men; but if a Servant deals for others by his Master's Direction, and they break, the Servant can be no Loser, for he is taken to have no other Credit but his Master's: Which is the Cause

Cause that Intimations, Citations, Attachments, and other lawful Courses are executed against Servants ; and take not Place against Factors.

No Factor acting for Account of another in Merchandize, can justify in receding in any Manner from the Orders of his Principal, tho' there may be a Probability of Advantage by another Management ; unless the Principal give him a general Commission to act for the best, when he may do for him as he shall think fit. And here, if four or five Merchants remit to one Factor four or five distinct Parcels of Merchandize, and the Factor disposes of them jointly to one Person, who pays one Moiety of the Money down, and contracts to pay the Remainder at the Expiration of a certain Time : Now if the Vendee breaks before the Payment of the other Moiety, every one of the Principals shall bear an equal Share of the Loss sustained. *Lex Mercat.* 81, 82.

If the Factor sell at one Time unto one Man several Parcels of Goods or Commodities, belonging to divers Men's Accounts, to be paid for in one or more Payments, without any Distinction made by the Buyer for what Parcels he payeth any Sum in Part of Payment of the said Debt, as Shop-keepers do ; then the Factor is to make a proportionable Distribution of the Moneys so received upon every Man's Account, according to the Sum that every ones Parcel sold did amount to, until all be paid ; and if any Loss happens, or all be not paid, the said Loss is to be distributed on every Person's Account accordingly.

As Fidelity, Diligence, and Honesty are expected from the Factor; so the Law requires the like from the Principal, judging the Act of one to be the Act of the other: And therefore, if a Merchant remits counterfeit Jewels to his Factor, who sells and disposes of them for valuable Consideration, as if they were right; if the Factor receives any Loss or Prejudice thereby, by Imprisonment or other Punishment, the Principal shall not only make good the Damage to the Factor, but also render Satisfaction to the Party to whom the Jewels were sold: For the Principal shall answer for his Factor in all Cases where he is privy to the Act or Wrong. This was insisted upon in the Case of *Southern* against *How*, on a Sale made to the King of *Barbary*; but by the Circumstances of that Case, after divers Arguments thereof, at last Judgment was given against the Plaintiff. 2 *Cro.* 468. *Bridgm.* 126, 128.

And so it is in Contracts; as if a Factor shall buy Goods on Account of the Principal, especially where he is used so to do, the Contract of the Factor shall oblige the Principal to a Performance of the Bargain; and he is the proper Person to be prosecuted for Non-performance. But it has been held, if a Factor or Servant buy Things generally, and doth not upon the Contract declare, that he buyeth only as a Factor, &c. he is chargeable in his own Right, in such a Contract. 2 *Keb.* 812.

The Actions of Factors depend on Buying and selling, and in general relate to Entering Goods, Freightings Ships, Assurances, and all other

other Matters, Maritime and of Commerce; and their Authority and Trust being very great, they ought to be provident in their Actions, for the Benefit of their Principals. If Goods, and Merchandize are sent to a Factor, and upon Arrival, he shall through Negligence or otherwise be guilty of making a false Entry at the Custom-house, or shall land the Merchandizes without an Officer of the Customs, whereby they incur a Seizure or Forfeiture; in this Case, the Factor shall make good the Damage to the Principal: But if a Factor makes his Entry according to the Invoice, or Advice received by Letter, and there then happens to be a Mistake, if any of the Goods are lost, the Factor shall be acquitted. *Lane's Rep.* 65.

In Chancery it has been decreed, that if a Factor saves the Customs of Goods due to a Foreign Prince, and such saving by the Laws of that Country, is Felony in the Factor, and a Forfeiture of all the Freight, the Factor shall have the Benefit of the Customs saved, and not the Employer; for he run the Hazard wholly, and has the Possession, which is a Right against all, except him that hath the very Right. Though if the Duties or Customs were due to our King, and the Factor saves them, and a Bill is brought by the Merchant against him, he shall be obliged to discover the same; for this Custom being founded in Fraud, is void. *Abr. Cas. Eq.* 369. 370.

If a Principal give Orders to his Factor, that he shall make an Insurance on the Ship and Goods, as soon as laden, and having Money in his Hands, he neglects to make such Insurance; if the Ship happens to miscarry, by the Custom

of Merchants, the Factor shall answer it; so if the Factor make any Composition with the Insurers, after he hath insured the Goods, without Order or Commission from his Principal, he is answerable for the whole Assurance to the Merchant. A Factor enters into a Charterparty of Affreightment with a Master of a Ship, it obliges him only; unless he lades abroad generally the Principal's Goods, when both the Principal and Lading become liable for the Freight, and not the Factor.

A Merchant sends Goods to his Factor, and about a Month after draws a Bill on him; the Factor having Effects in his Hands, accepts the Bill, then the Principal fails, against whom a Commission of Bankrupt is awarded, and the Goods in the Factors Hands are seized; it has been conceived, that at Law the Factor must answer the Bill notwithstanding, and the only Benefit he can have, is to come in as a Creditor for so much as he was obliged to pay, by Reason of his Acceptance of the Bill. *Molloy* 442.

When Goods or Merchandize are remitted to a Factor, they ought to be carefully preserved; yet if he buys Goods for his Principal, and they receive Damage after in his Possession, through no Negligence of his, the Principal shall bear the Loss. Such Factor having made a considerable Profit for his Principal, he must take due Care in the Disposition of the same; If the Factor sell the Principal's Goods, and receive Counterfeit Money, the Loss is to be made good by him; but if he receives Money, which is afterwards lessen'd in Value by Edict or Proclamation of the Country wherein he resides,

resides, the Loss thereby shall be born by the Merchant.

A Factor is accountable for all lawful Goods which come safe to his Hands, and shall suffer for not observing of Orders: If he has Orders not to sell any Commodities particularly specified, and yet sells them, he is answerable for any Damage that shall be received; in Case Goods are bought or exchanged without Orders, it is at the Merchants Courtesy whether he will receive them, or turn them on his Factors Hands. And where a Factor has bought or sold Merchandize, pursuant to Orders, he is immediately to give Advice of it to his Principal, lest the former Orders should be contradicted before the Time of his giving Notice and his Reputation suffer: And the Goods bought, he is to ship and send away by the first Opportunity, giving the speediest Advice, and sending a Bill of Lading.

The Contents of all Letters from their Principals, Factors ought to be very careful in observing, and be diligent and punctual in giving speedy and particular Answers. And they are to make it their Business to study their Nature, Value, Rise, and Fall of Merchandizes, as well here at Home as abroad; and also the proper Seasons of Buying and Selling: And the want of frequent Writing to their Principals, is oftentimes of pernicious Consequence, in divers Respects.

As to Factorage, the Gain of it is certain, however the Success of the Voyage or Sale of the Goods proves to the Merchant; but the Commissions vary according to the Distance and Customs of the Country, in the several Places

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Places where Factors are resident; at *Jamaica*, *Barbadoes*, *Virginia*, and most of the *Western* Parts of the World, the Commission runs at 8 *per Cent*. Generally thro' *Italy* two and a half *per Cent*. *France*, *Portugal*, *Spain*, &c. two *per Cent*. and in *Holland*, and other Places near *Home*, one and a Half *per Cent*.

Where a Factor at the *Canaries* deserves Money for Factorage, it is said he cannot bring an Action for it, unless the Principal refuse to come to Account; and if it appears that the Factor hath Money in his Hands, he may detain, and can't bring any Action for his Factorage: But if he were directed to vest all the produce of the Adventure in Wines, then he may bring an Action for the Factorage and his Pains, because he cannot detain, and hath no other Remedy: *Comberb* 349.

If a Factor by Error of Account do wrong to a Merchant, he is to amend and make good the same, not only for the Principal Money, but also with the Interest thereof for the Time: And on the contrary, if a Factor in his own Wrong, hath forgot to charge the Merchants Account with some Payments made by him, or Moneys made over by Exchange; the Merchant is to answer it, with Interest for the Time.

By the Statute, no Governor, or Deputy Governor of any of the Plantations in *America*, are the Judges there, or any other for their Use, shall be a Factor or Agent for the *African* Company or others, for the Sale or Disposal of Negroes; and any Person offending therein, shall forfeit 500*l*. to be recovered in any of the Courts of Record at *Westminster*. 9 & 10 *W. 3.* cap. 26. A

A Bond from a Factor to his Principal, for faithful Service abroad.

K NOW all Men by these Presents, That we C. D. of, &c. and E. F. of, &c. in the County, &c. Gentleman, are held and firmly bound to A. B. of, &c. Merchant, in Two thousand Pounds of good and lawful Money of Great Britain, to be paid to the said A. B. or to his certain Attorney, his Executors, Administrators or Assigns; for which Payment to be well and truly made, we bind ourselves, and each and either of us by himself for and in the whole, our Heirs, Executors and Administrators, and of either of us, firmly by these Presents, sealed with our Seals: Dated this Day of, &c. in the Year of the Reign, &c.

Whereas the above-named A. B. hath, at the Request of the above-bound E. F. and C. D. preferred the said C. D. as his Factor, to serve him at Port-Royal in Jamaica, and other Ports and Places beyond the Seas; and the said C. D. is upon his Departure for Port-Royal aforesaid, to take upon him the said Business and Employment. Now the Condition of this Obligation is such, that if the said C. D. shall from Time to Time, and at all Times, during his Employment abroad in the Service of the said A. B. whenever he shall be thereunto required by the said A. B. his Executors, Administrators, Agents, or Assigns, make and give unto him or them, true and perfect Accounts in Writing, of, for and concerning all and every such Goods, Merchandizes, Money, Bills of Exchange, and other Things whatsoever,
which

which shall, at any Time or Times hereafter, be consigned or sent unto him the said *C. D.* by or from the said *A. B.* his Executors, Agents, or Assigns; and of and for all and every the Return, Proceed, and Benefit to be had or gotten for or in Respect of the said Goods, Money, Merchandizes, Bills of Exchange, and other Things whatsoever, for which he the said *C. D.* shall or may be charged or answerable, and which shall come to, or be committed to his Charge, Custody, or Disposition, by and from the said *A. B.* or by or from any other Person or Persons, wherewith the said *C. D.* his Executors, or Administrators, shall, can or may be lawfully charged or chargeable, by Reason of his said Employment, in any Respect whatsoever: And shall likewise well and truly remit, pay and deliver unto the said *A. B.* his Executors, Administrators, and Assigns, upon every such Account made, all such Money, Goods, Wares, Merchandizes, Notes, Securities for Debts, and other Things in his Hands, in such Nature and Quality as the same shall then be and consist, as by and upon the same Account shall appear to be due or belonging to the said *A. B.* his Executors, or Assigns. And farther if the said *C. D.* shall, from Time to Time during the said Employment, follow the Orders and Directions of the said *A. B.* his Agents and Assigns, concerning the Management of his Business, and the Sale, Disposal, and Proceeds of all and every the Goods, Merchandizes, and Effects committed to his Care; then this Obligation shall be void, or else to remain, &c.

See Bills of Exchange.

C H A P.

C H A P. XIX.

Of Consuls in foreign Countries, and Ambassadors.

AMONG the Romans Consuls were chief Officers, yearly chosen, to govern the City of Rome. But this Government of Rome has been long since abrogated. Our Consuls abroad take Care of the Affairs and Interest of Merchants, in foreign Kingdoms, where they are appointed by the King; as at *Lisbon*, &c.

The Trial of a Cause before the Consul, was formerly the dernier Resort; and we read of Merchants Courts called Prior and Consuls, established in *France*, *Italy* and *Germany*, to determine Causes by the Law-Merchant in the most summary Way of Proceeding, to avoid Interruption of Traffick and Commerce: And the Authority of the Prior and Consuls of *Roan*, by Virtue of an Edict of the *French* King, was very great and extensive.

By the Laws of *France*, he that shall obtain Letters Patent to be Consul in the Sea Port Towns of Trade, in the *Levant*, and other Places of the *Mediterranean* under the Dominion of the *Grand Signor*, shall cause Intimation thereof to be made in the Assembly of the Merchants of the Place of his Establishment, and cause them to be recorded in the Offices of the Consulship, and the Admiralty, &c. and shall take the Oath mentioned in his

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his Patent. The Consuls so appointed are to call to the Assemblies, which they shall hold for the Affairs of Commerce, all the Merchants of their Nation, Captains and Patrons upon the Place; and as to their Jurisdiction, they shall conform themselves to the Customs and Treaties made with the Princes where they reside. These Consuls are to keep exact Memoirs of the important Office of their Consulship; and send once a Year to the Secretary of State, who has the Management of Maritime Affairs. *Sea Laws* 271, 272.

By the Treaty of *Utrecht* between *Great Britain* and *Spain*, it is agreed, that the Consul which shall reside in any of the Dominions of the King of *Spain*, for the Protection of the *British* Subjects there, shall be named by our King; and shall use and exercise the full Power as any Consuls ever had. And the Estates of the *English* dying intestate in *Spain*, shall be inventoried by such Consul, and put into the Hands of two or three Merchants nam'd by him, for the Security thereof, and Benefit of the Proprietors and Creditors. *Artic.* 27, 34.

The Statute 9 *Geo. 2. cap. 25.* enacts, that it shall be lawful for Persons appointed by the Consul for his Majesty's Subjects trading to the Ports of *Cadiz* and *St. Mary's* in *Spain*, together with the Majority of the *British* Merchants and Factors here, to receive from all Masters of *English* and *Irish* Ships that trade to the said Ports, any Sums of Money not exceeding one Ryal Plate *per Ducat* on the Freight of Goods and Merchandize (except Tonnage Goods) imported into the same Ports, and

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and on all Tonnage Goods not exceeding two Ryals Plate *per* Ton; and all Bills of Lading of such Ships shall specify to pay the said Money accordingly, under the Denomination of *Contribution*, as by Act of Parliament, &c.

And all the Commanders of *British* or *Irish* Ships trading to the Ports of *Cadiz*, and Port *St. Mary's*, and delivering there, shall within ten Days after their Arrival, deliver to the Consul a Manifest upon Oath, specifying the Particulars of the Cargo, and to whom consigned; which Oath such Consul, or other Person to be appointed by him, is to administer. And the Consul shall detain the Clearances outward, until Payment made of the said Money; and in Case the said Master of any such Ships shall depart without his Clearances, the Consul upon Return of the said Master to any Port of his Majesty's Dominions, may have an Action at Law against him for the Money which ought to have been paid.

All Moneys to be raised as aforesaid, shall be applied to the Relief of Ship-wrecked Mariners, and other distressed Persons, his Majesty's Subjects, and to such other charitable and publick Uses, as shall be appointed by the Consul, with the Majority of *British* Merchants and Factors residing at the said Ports of *Cadiz* and Port *St. Mary's*.

Also the Consul shall, as he shall see Occasion, call a general Meeting of the *British* Merchants and Factors; and as often as he shall be desired, by Writing under the Hands of any five of the said *British* Merchants or Factors; and the Majority at such Meetings,

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ings, shall order all Matters relating to the Premisses.

The 10 *Geo. 2. cap. 14.* is an Act for collecting at the Port of *Leghorn* certain small Sums to which the Merchants trading there have usually contributed, for Relief of Shipwrecked Mariners, Captives taken in War, and other distress'd Subjects of his Majesty, and for other charitable and publick Uses, appointed by the Consul and Majority of *British* Merchants and Factors at *Leghorn*.

And by this Act, the Money is one Third of a Livre *per* Ton or Bale on Goods imported, to be paid by all Masters or chief Officers of Vessels trading from any Part of his Majesty's Dominions to the said Port; and the Persons paying the same, shall be reimbursed by their Freighters, or those Persons to whom the Goods are consigned, or the Receivers thereof: And if the Masters of any such Vessels, shall not specify the Payment in the Bills of Lading, they shall be answerable for the same: and where no such Bill appears, or the Tonnage is not settled, it shall be valued by two indifferent *British* Merchants there, one to be chosen by the Consul, the other by the Commander of the Vessel, within ten Days after unlading; and if such two Persons do not agree, an Umpire, being a *British* Merchant, shall be chosen, who shall determine the Valuation in three Days, and then such Money shall be paid.

An *Embassador* is a Servant of the State, representing the King in a foreign Country, sent with Commission to treat of Business, and take

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take Care of the publick Affairs: And the ordinary Embassadors, have commonly the Protection of Merchants.

'Tis distinguish'd by Writers, that an Agent represents the Affairs only; but an Embassador ought to represent the Greatness of his Master and his Affairs. No Subject, tho' ever so great, can send or receive an Embassador; and Embassadors may be warn'd not to come to the Place where sent, and if they then do it, they shall be taken as Enemies: But being once admitted, even with an Enemy in Arms, they shall have the Protection of the Laws of Nations, and be preserved as Princes. And it is said Embassadors may be excused of Practices against the State where they reside, unless in Point of Conspiracy, &c. because it doth not appear whether they have it in *Mandatis*; and then they are excuseable by Necessity of Obedience. *Molloy* 93, 94. *Bac. Max.* 26.

The Case of *Samuel Pelagii*, a *Morocco* Embassador, is very particular; he was sent to the States of the *United Provinces*, and coming to them, they accordingly treated with him; but afterwards he departed from *Holland*, and being upon the Sea, he took, robb'd and spoil'd a *Spanish* Ship, and after came into *England*: The *Spanish* Embassador here having Notice of it, caused his Person to be seised and imprisoned, and would have proceeded against him as a Pirate; whereupon the Lord *Coke* and other Judges, with the Civilians, were called for, to declare what was the Common Law and the Civil Law in this Point, as

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touching the intended Proceedings, and whether he might be thus prosecuted, or not.

Then the Civilians said and affirmed, that Embassadors have divers Privileges allowed to them by the Law of Nature; as that their Bodies are not to be arrested; also if they offend against penal Laws and Statutes, their Embassadorship shall excuse them; but not if the Offence be in a Case of High Treason, which is an Offence against the Law of Nature: And Magistracy is by the Law of Nature, so that if the Embassador offend against this, his being an Embassador, will no Ways privilege him; otherwise it shall be in other criminal Cases.

To this it was answered by the Judges, that at Common Law he ought to be arraigned by the Statute of 28 *Hen. 8. cap. 15.* and not by the Law of Nature: But as touching the main Point, Whether the *Morocco* Embassador's taking from the *Spaniards*, be a Taking by him as a Pirate, or not, and by Judgment of Law he shall be proceeded against here and adjudged to be a Pirate; they did all agree, that by this taking he was not in our Law said to be a Pirate: In Regard that the King of *Spain* and the King of *Morocco* were Enemies, and in open Hostility, and therefore this taking from an Enemy in Judgment of Law could not be called *Spoliatio*, *sed legalis Captio*; and if an Enemy do take Goods of another, it is not Felony.

Afterwards in *Michaelmas* Term 13 *Jac. 1.* this Case between *Pelagii* and the *Spanish* Embassador, was moved again, upon a Prohibition prayed

prayed to stay Proceedings against him and others in the Court of Admiralty; and as to this, the Case was, That he had taken upon the Sea *Jure Belli*, the aforesaid *Spanisb* Ships, and sixteen Chests of Sugar; that he came hither, and sold them to some *English* Merchants, against whom and the said *Pelagii*, the Embassador of *Spain* had libelled in the Admiralty, for these Chests of Sugar; on which Libel, they being lawfully taken, as was pretended, and so enforced, they mov'd for a Prohibition.

Coke C. J. For the determining of this Matter, by Order of the Council, another Conference was appointed to be had, between some of the Judges, together with the Civilians, further to consider of this Case. It appear'd that *Pelagii* was a *Jew*, who took the *Spanisb* Ships; and as one said, they sent their Men home by Sea, tossing them over-board; they also took some *Englishmen*, but to them they made Satisfaction: The *Spanisb* Embassador desired to have him try'd by the Statute of 28 *Hen.* 8. But upon the Resolution of that Case, the Judges signified unto the King, that he could not here be tried as a Pirate. Then as to the Goods which were taken on the Sea, the Civilians held, that because *Pelagii* brought them *in solo amici*, they may deal for them civilly in the Court of the Admiralty, and he ought there to answer, and therefore no Prohibition was to be granted: And a Sentence was given for the *Spanisb* Embassador, that there should not go a Prohibition; for then he would be without Remedy. 3 *Bullst.* Rep. 27, 28, and 29. But see *Hob.* 112.

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By the Civil Law not only the Persons of Embassadors shall be privileged from Arrest; the moveable Goods of Embassadors, which are accounted an Accession to their Persons, cannot be seized on, either as a Pledge, or for Payment of Debt, nor by Order or Execution of Judgment, altho' by Leave of the King or State where resident; for they ought to have full Security, as well concerning that which toucheth their Necessaries as their Persons: And therefore if any Embassador hath contracted a Debt, he is to be called upon kindly, and on Refusal of Payment, Letters of Request are to go to his Master, &c. But Sir *Edward Coke* seems to be of another Opinion; that as for Contracts and Debts that are good *jure Gentium*, he must answer here. *Molloy* 104.

And by the Act 7 *Ann. cap.* 12. the Embassador of the Emperor of *Great Russia*, being arrested, and taken by Violence out of his Coach in the Street, and kept in Custody; it was enacted, That all Suits against him should be void, and the Proceedings against him, or his Bail, be vacated: And that all Process, whereby the Person of any Embassador, or other publick Minister, or of his Servants, may be arrested and detained, or his or their Goods distrained, shall be adjudged void for the Time to come.

The Persons suing forth such Process, their Attornies and Solicitors, and the Officers executing the same, on Conviction thereof by Confession of the Party, or by the Oath of one Witness, before the Lord Chancellor, or either of the Chief Justices, shall be deemed

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Violaters of the Laws of Nations, and also suffer such Penalties and corporal Punishment, as they, or any two of them, shall judge fit.

But no Merchant, or Trader, within the Description of any of the Statutes of Bankrupts, and putting himself into the Service of any Embassador, &c. shall have any Benefit by this Act: Neither shall the Servant of an Embassador have any Privilege, unless his Name be registered in the Secretaries Office, and transmitted to the Sheriffs of *London* and *Middlesex*; who must hang it up in some publick Place in their Office.

By 5 *Geo. 1. cap. 27.* it is enacted, That if any Person shall contract with, entice or solicit any Artificer in Wooll, Iron, Steel, Brasse, or other Metal, Clock-maker, Watch-maker, &c. to go out of this Kingdom into foreign Countries out of the King's Dominions, he shall be fined any Sum not exceeding 100*l.* and be imprisoned three Months, being convicted in any of the Courts at *Westminster*, or at the Assizes, or Quarter-Sessions of the County, &c. And if any of his Majesty's Subjects, who are such Artificers, shall go into any foreign Country, there to exercise or teach any of the said Trades to Foreigners, &c. and do not return into this Realm, within six Months after Warning given them by the Embassador, Envoy, Resident, Minister, or Consul, of the Crown of *Great Britain*, in the Country where the Articers shall be, or by any Persons authorized by such Embassador, &c. every such Artificer shall be incapable to take any Legacy, or of being an Executor or Administra-

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tor, and of taking any Lands by Discent, Devise or Purchase, and shall likewise forfeit all their Lands, Goods, &c. here, and be deemed Aliens, out of his Majesty's Protection.

And upon Complaint made to a Justice of Peace, that any Artificer aforesaid, is preparing to go out of his Majesty's Dominions, &c. he may send his Warrant to bring the Person complained of before him, and bind the Party to appear at the next Assizes, or General Quarter-Sessions; and there he shall be obliged to give Security to the King, not to depart the Realm, &c.

C H A P. XX.

Of the Admiralty Jurisdiction, &c. in Sea Affairs.

THE Court of Admiralty was establish'd by King *Edward* the Third, for determining Maritime Causes; and *Richard* the 2d limited its Jurisdiction: Though in the Time of *Edward* first, the Causes of Merchants and Mariners, and other Things arising on the Main Sea, were tried before the Lord Admiral.

All Maritime Causes, or Causes arising wholly upon the Sea, out of the Jurisdiction of any Country, this Court hath Power to determine; but a Judgment of a Thing done upon Land, is void: The Process and Proceedings

ings are in the Name of the Lord Admiral, &c. and by Libel; and the Plaintiff and Defendant enter into a Stipulation or Bail, for their Appearance, and to abide the Sentence of the Court. 4 Co. Inst. 134.

But the Admiralty Court is not allow'd to be a Court of Record, because it proceeds by the *Civil Law*; and the Judge hath no Authority to take such a Recognizance, as a Court of Record may: Though they may punish those by Fine and Imprisonment, who resist the Process of that Court. And therefore, where the Libel was against a Man for rescuing a Ship, &c. from one who came to execute Admiralty Process; and for that in the Face of the Court he assaulted and beat a Person; Now tho' these Things were determinable at Law, the Ship being *infra Corpus Comitatus*, yet it was agreed they might fine and imprison for this Matter, but not give Damages. 1 Ventr. 1.

The Admiralty hath Jurisdiction where the Common Law can give no Remedy, and of all Contracts made *super altum Mare*. And it has been held this Court hath Jurisdiction in Cases of Freight, Mariners Wages, or for Breach of Charterpieces, altho' made within the Realm, so as the Penalty be not demanded; and likewise in Cases of Building, Mending, Saving or Victualling Ships, &c. so as the Suit be against the Ship, and not against the Party: And this Court hath a Jurisdiction to redress Annoyances and Obstructions in Rivers, which may hinder Navigation to and from the Sea. 6 Rep. 2 Cro. 216.

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According to Chief Justice *Hobart's* Opinion, in every Suit in the Admiralty, the Plaintiff must lay the Cause to be *super altum Mare*; for the Jurisdiction of that Court arises from the Place, and not from the Cause; and otherwise a Prohibition may go: And 'tis not sufficient to alledge the Thing done *infra Jurisdictionem*, &c. generally; but it must be so laid, that it may evidently appear to the Court, that it was so. It is usual in Libels, to alledge the Contract was made upon the High Sea; and if a Ship lies at Anchor, and wants Victuals, and the Master sends to One at Land to supply the same, and then the Contract is made in the Ship at Sea, it shall be tried in the Court of Admiralty; but contrary, if the Contract be made at Land, and afterwards the Victuals are sent to the Ship. *Hob. Rep.* 231. *Latch.* 11.

It is observed, that the Jurisdiction of the Admiralty is confin'd to Things done upon the Sea, by the Statute of 13 R. 2. cap. 5. which enacted, That the Admirals and their Deputies, shall not meddle with any Thing done within this Realm, but only with Things done on the Sea. And by the 15 R. 2. cap. 3. 'tis declar'd, That the Court of Admiralty shall not have Cognizance of Contracts, Pleas, or other Things, done within the Bodies of Counties, as well by Land as by Water: Nevertheless of the Death of a Man, and of a Maihem committed in large Ships, hovering in the Main Stream of great Rivers, (beneath the Bridges near the Sea) the Admiral shall have Cognizance; and likewise to arrest Ships in Fleets, for the great Voyages

Voyages of the King and Kingdom, &c. if one be sued in the Admiralty contrary to these Statutes, he may have a Prohibition, to cause the Judge to stay the Proceedings; and may also have an Action upon the Statute against the Party suing. 10 *Rep.* 75.

The Favourers of the Admiralty Jurisdiction say, That the Intent of the Act 13 *R.* 2. was not to Inhibit the Admiral Court, to hold Plea of any Thing made beyond Sea, but of Things done within the Realm, which pertain to the Common Law; and 'tis not in Prejudice of the King or Common Law, if they hold Pleas of Things over the Sea; and that this was the Intention of that Statute, appears by the Preamble. Here two Judges held, that if a Thing done beyond the Seas, be so local, that it cannot be tried by the Common Law, if the Admiralty hold Plea thereof, Prohibition shall not be awarded; for it is not to the Prejudice of the King, nor of the Common Law: But if the Party can have his Remedy at Common Law, that shall be preferred. 2 *Brownl.* 16, 17.

A Contract made beyond Sea upon the Land, shall not be tried in the Admiralty; but if the Defendant admit of the Jurisdiction of the Court, and suffer Sentence to pass, then the *King's Bench* will not grant a Prohibition, &c. unless it appear in the Body of the Libel, that the Admiral had no Jurisdiction. An Agreement was made on the Sea, and afterwards put in Writing at a Port in *Barbary*, for transporting Sugars, &c. which were spoiled by Salt Water; in this Case it was resolv'd, that a Prohibition lay, because the original Contract, tho' it were made at Sea, yet was chang'd
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when it was put into Writing sealed, which being at Land, altered the Jurisdiction as to that Point; but if it had been a Writing only without Seal, it had made no Alteration: And now here, as the Contract was on the Land, altho' the Breach be at Sea, which are two several Acts, because these two must concur to make the Cause of the Suit which is entire, therefore the Party shall be forced to sue in the King's Court; and further because that and the Common Law ought to prevail against other Courts and Laws. 2 *Brownl.* 34. *Hob.* 212.

On a Contract made at *Malaga*, a Prohibition was granted: And there being a Libel in the Admiralty, upon a Contract made at *Marseilles* in *France*; it was adjudged, that the Court of Admiralty had no Jurisdiction of it, and that the Contract might be laid to be made at *Marseilles* in *Kent*. And so of a Bond or Obligation made beyond the Seas, it may be sued in what Place in *England* the Plaintiff pleases; so that tho' it bears Date at *Bordeaux* in *France*, it may be alledg'd to be made at a certain Place called *Bordeaux* in *France*, in *Islington* in the County of *Middlesex*, and there it shall be try'd, &c. also if a Man should make an Obligation at Sea for Security of a Debt growing before at Land, or make a Promise to pay the same, this cannot be sued in the Admiralty Court, because it is not for a Marine Cause: And by some of our Books, if any Obligation were made at Sea, yet it could not be sued in the Court of Admiralty, for it takes its Course, and binds according to the Common Law. 2 *Brownl.* 11. 3 *Co. Inst.* 2. *Bulst.* 322. *Hob. Rep.* 79. 11. 12.

And

And it was resolved by the Lord *Hobart* and the whole Court of *Common Pleas*, that the Admiralty can hold no Plea of any Contract, but such as riseth upon the Sea; not though it rise upon any Continent, or in any Port, or Haven in the World, out of the King's Dominions; for their Jurisdiction is limited to the Seas only, the Admiral is for the Sea, and the Court for Maritime Causes: Therefore, if any Stranger or other Person will seek Justice at the Hands of the King of *England*, for Wrongs done out of his Dominions, he must seek it in those Courts that have Jurisdiction over the Cause. And if the Cause rise at Land, or in a Port (for no Port is Part of the Sea, but of the Continent) then he cannot sue in the Admiralty, but he must prosecute in the Courts of Common Law, which have unlimited Power in Causes transitory. *Hob. 79.*

A Charter-party was made at *Dunkirk*, and the Defendant as Attorney of one of the Parties, by Virtue of a Letter of Attorney, prosecuted a Suit in the Admiralty against the Plaintiff; it is here said to be adjudged, that if all the Matter was to be done at *Dunkirk*, then 'tis a Marine Cause, and the Admiralty should have Jurisdiction; but if Part was to be done in *England*, then it is otherwise. *Godb. 385. 1 Nels. Abr. 182.* as to Ports and Havens in this Kingdom; where a Master of a Ship bought Goods of a Salesman in the Port of *London* near the *Tower*, who delivered them on Board the Ship there; and on a Libel against one for a Ship in the River at *Limehouse*, &c. These were held to be within the Body of the County,

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County, and that the Admiralty had no Jurisdiction. *Owen* 122. *Moor* 891.

If a Contract be made beyond Sea, for doing of an Act or Payment of Money within this Kingdom, it shall be tried by Jury at the Common Law: But where the Contract is made in *England*, and there is a Conversion beyond the Sea, the Party may sue in the Admiralty Court, or at Common Law. And if a Merchant here write to his Agent in *France* to receive certain Goods and Merchandizes which he hath sent to him, and to Merchandize with them for his Use; if the Agent or Factor receiveth them, and converts the Goods to his own Use, he shall be sued in the Admiralty. 4 *Leon. Rep.* 146, 147.

The Court of Admiralty cannot hold Plea of a Matter arising from a Contract made on Land, tho' it be concerning Things belonging to Ships, as before is mentioned: But the Admiralty may hold Plea for the Seamen's Wages, &c. because they become due for Labour done upon the Sea; and the Contract made upon the Land is, only to ascertain them. Mariners Wages are contracted on the Credit of the Ship, and they may all join in Suits in the Admiralty; whereas at Common Law they must all sever: The Master of a Ship Contracts on the Credit of the Owners, and not of the Ship, and therefore he cannot sue in the Court of Admiralty for his Wages. 3 *Lev.* 60. 1 *Salk.* 33.

In a Suit brought in the Admiralty for Mariners Wages, it was moved for a Prohibition, upon a Contract made for them at Land: And the

the Court held, that for Convenience of Seamen, the Admiralty had been allowed to hold Plea for Mariners Wages; but yet with this Limitation, that if there be any special Agreement by which the Mariners are to receive their Wages in any other Manner than is usual; or if the Agreement be under Seal, so as to be more than a parol Agreement, Prohibition shall be granted. 1 *Salk.* 31. But in a like Case, the Prohibition was denied; for if there is any Special Contract, as suggested, the Defendant may plead it in the Admiralty Court; and if they do not allow the Plea, it may then be a proper Time to move for a Prohibition. *Trin.* 11 *Geo.* 1. *Mod. Cases in Law and Equity* 379.

A Ship-builder made a Contract for a Ship, with a Master and others who were to be Part-Owners, who thereupon had the Ship, and afterwards the Master contracted with Seamen to go a Voyage with him, and in order to rig the Ship he employed several of them on Board for a considerable Time; but upon some Disagreement between the Builder and Owners, the Voyage was put off, and the Seamen dismissed, who libelled against the Ship for their Wages: The Defendant suggested, for a Prohibition, that the Work was done *infra Corpus Com. &c.* and that the Ship did not proceed in her Voyage; but the Prohibition was not granted.

In this Case it was adjudged, where a Contract is made with Seamen to go a Voyage, and in Order thereto they work in a Port, if the Ship do not proceed on her Voyage, thro' the
Owners

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Owners Fault, they may sue in the Admiralty for their Wages, for work done in Harbour, because it was done in pursuance of a Contract, to go a Voyage; but it had been otherwise, if the Work were done pursuant to a Contract to work in the Harbour; and here the Ship ought to be liable, because the Builder trusting it in the Owner's Possession, gave him an Opportunity of agreeing with Seamen. *Mod. Caf.* 238.

A Contract being made at Land with several Mariners, to bring a Ship from one Port to another, for which they were to have a certain Sum of Money; upon a Libel in the Court of Admiralty for this Money, it was said for a Prohibition, that the Contract was with the Seamen for a Sum in Gross, therefore it could not be within the ordinary Rules of Mariners Wages, and as this Contract is, they are to sue at Law: The Prohibition was not granted; for this shall be taken for Mariners Wages, of which the Admiralty hath Jurisdiction. *1 Vent.* 343. 146.

If Goods delivered on Shipboard are imbezill'd, all the Mariners ought to contribute to the Satisfaction of the Party that lost his Goods by the Maritime Law, and the Cause is to be tried in the Admiralty. *1 Lill.* 368. A Master of a Ship if a Minor, undertaking to bring Goods from any Place abroad to *England*, if he wastes and consumes them, he may be prosecuted in the Court of Admiralty, tho' he be an Infant. *Roll. Abr.* 530.

And where a Ship was insured, against the Barratry of the Master, &c. in an Action brought

brought thereupon, the Jury found, that the Ship was lost by the Fraud and Negligence of the Master: The Court held, that if the Master run away with the Ship, or imbezil the Goods, the Merchant may have his Action against him; for 'tis reasonable that Merchants who venture a large Share of their Stocks should secure themselves in what Manner they think proper against Barratry of the Master, and all other Frauds; and this must be intended Fraud in the Master, not a bare Neglect: And they all agreed that Fraud is Barratry, tho' not named in the Covenant; but Negligence might not. *Mod. Caf. L. & E.* 230. 231.

By the Course of the Admiralty they decree, that where there are several Owners of a Ship, and some are for freighting, and some against it, that the Majority shall prevail, giving those who dissent Caution for their respective Parts against all Risques, which was done in the present Case; and the Ship being lost, they libelled in the Court of Admiralty for the Caution and had a Sentence: But upon a Motion for a Prohibition, suggesting that this Caution was given at Land, and that all Matters of Property are to be tried at Common Law, a Prohibition was granted, though after Sentence. *Mod. Cases* 162.

'Tis a Custom of the Court of Admiralty, that Goods may be attached in the Hands of a third Person *in Causa Maritima & Civili*, and on four Defaults made, the Goods so attach'd shall be delivered into the Possession of the Plaintiff, he giving Caution to re-deliver them, if the Cause of Action be disproved
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within a Year and a Day after the four Defaults; and if the Party in whose Hands such Goods are, refuse to deliver them, then 'tis the Custom of that Court to imprison him until he do. *March. 24.*

A Defendant was in Execution in a Prison of the Admiralty, on Sentence given against him in that Court, and a *Habeas Corpus* issued to remove him from thence to answer an Action in the *King's Bench*; and upon the Return it was moved, that he might be committed to the Marshal: But he was remanded, for the Admiralty Proceedings are supported by the Custom of the Realm. *1 Salk. 351.*

The Admiralty Court may award Executions upon Land; tho' not hold Plea of any Thing arising on Land: And upon Letters Missive or Request, the Admiralty here will order Execution on a Judgment given beyond Sea, where an *Englishman* flies or comes over hither, by Imprisonment of the Party, who shall not be delivered by the Common Law. *4 Inst. 141. 1 Roll. 530.*

It has been agreed by our Judges, that where Sentence is obtained in a Foreign Admiralty, one may libel for Execution thereof here; because all the Courts of Admiralty in *Europe* are governed by the Civil Law, and are to be assistant one to another, though, the Matter were not originally determinable in our Court of Admiralty: But in this Case, there was no compleat Sentence in the foreign Admiralty, only an Award, that Wines should be receiv'd into a Ship; and now for Breach thereof the Party ues there, which is in the

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Nature of an original Suit, and also to have Execution of the Sentence, which ought not to be allowed. 1 *Ventr.* 32. *Sid.* 418.

In an Action brought for a Ship taken, there was a special Verdict, setting forth a Sentence of the Admiralty of *France, &c.* and the chief Question was, Whether this Sentence should be examined in the Action at Common Law? And resolved, it shall not; because, tho' it be in another Kingdom, we ought to give Credit to it, or else they will not give Credit to the Sentences of our Courts of Admiralty; and the Parties are at no Prejudice for the Way is, if they find themselves aggrieved, to petition the King, who will examine the Case; and if he finds Cause of Complaint, will send to his Embassador residing with the Prince or State where the Sentence was given, to demand Redress, and upon Failure thereof, will grant Letters of Marque and Reprisal. *Raym.* 473.

On a Sentence given in our Admiralty, for the Possession of a Ship and Goods, the Judge did not determine the Right, from which Sentence an Appeal was brought; and the Civilians insisted, that an Appeal would not lie, because the Sentence was only for the Possession, and not the Right: But it was adjudg'd. that an Appeal well lies in this Case. *Moor* 814.

And where erroneous Judgment is given in the Admiralty, Appeal may be had to Delegates appointed by Commission out of *Chancery*, whose Sentence shall be final. Also Appeals may be brought from the inferior Ad-

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miralty Courts, to the High Court of Admiralty; except from the *Cinque-Ports*, the Lord Warden whereof hath an exempt Jurisdiction from the Admiralty of *England*. 8 *El. cap.* 5.

See *Piracy* and *Privateers*; and *Owners* and *Masters of Ships*, and *Mariners*, &c. Vol. I.

Some late Cases in Equity, concerning Ships, Seamen, &c.

IF a Charter-Party be so drawn, that nothing can be recover'd at Law, yet if the Parties have a just Demand, they ought to be relieved in Equity; and therefore it was decreed, that certain Persons should account for what they made of a Ship, and be also charged in Respect to Freight, &c. And in a Case where by Agreement there was no Freight to be paid for the outward bound Cargo of a Ship, but only so much *per Ton* for the homeward bound Cargo; and when the Ship arrived beyond Sea, the Factor had no Goods at all to load the Ship with; here the Court of *Chancery* decreed Payment of the Freight. 2 *Vern.* 210, 212.

A Master of a Ship, without the Owner, treated with a Merchant for the Freight of the Ship at eighty Tons, and accordingly entred into a *Charter-Party* with him, to sail from *London* to *Falmouth*, and thence to *Barcelona*, without altering the Voyage, and there to unlade at a certain Rate *per Ton*; and for Performance the Master binds the Ship, Tackle, &c. valued at 300*l.* The Master deviated,

viated, and committed Barretry, by which the Merchant in Effect, lost his Voyage and Goods; whereupon the Merchant in a Suit had Sentence against the Master and Ship at *Barcelona*, which was confirmed in a higher Court in *Spain*; and the Owner having brought Trover for the Ship, the Merchant exhibited his Bill in *Chancery* to be relieved against this Action, and likewise another Action brought for Freight: And it was held by my Lord Chancellor, that the Charter-Party having valued the Ship at a certain Rate, the Owner was not liable further; and the Master is answerable for the Deviation and Barretry, for should it be otherwise, Masters would be Owners of all Men's Ships and Estates. 2 *Chan. Cases* 238.

But where the Master of a Ship bought several Goods of the Plaintiff, as Beef, Bisket, Sails and Cordage, the Master failed, and a Bill was exhibited to compel the Defendants who were *Part Owners* of the Ship, to pay for the same, who insisted that the Master only was liable; and besides, that he had Money from the Owners to pay the Plaintiff. The Court held, that he was but a Servant to the Owners, and where a Servant buys, his Master is liable; and if the Owners paid their Servant, yet if he paid not the Creditors, they must stand answerable, and therefore decreed the Owners to pay the Plaintiff his Debt in Proportion to their respective Shares and Interests in the Ship. *Hill*. 1709. 2 *Vern*. 643.

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A Person entered into a penal Bond of *Bottomry*, to pay 40*s.* per Month for 50*l.* lent; the Ship was to go from *Holland* to the *Spanish* Islands, and so to return to *England*; but if she perished, the Lender of the Money was to lose his 50*l.* The Ship went accordingly to the *Spanish* Islands, took in *Moors* in *Africa*, and upon that Occasion sailed to *Barbadoes*, and then perished at Sea; the Borrower being sued on the Bond and Penalty, sought Relief in Equity, pretending that the Deviation was on Necessity; but his Bill was dismiss'd, saving as to the Penalty. 2 *Chan. Cases* 130.

Where one had lent 300*l.* on a *Bottomry*-Bond, and afterwards insured 450*l.* on that Ship, for six Guineas per Cent. Premium, as interested therein for his Money lent, &c. The Ship outlived the Time at which the Money was payable, and afterwards was lost in the *East-Indies*; the Lender recovered the Money on the Bond of *Bottomry*, and after that sued the *Insurers*, who brought their Bill to be relieved, for that the Money insur'd, was the Money lent upon the *Bottomry*, and the Defendant was no otherwise interested in the Ship; and that the Money being paid, no Use ought to be made of the Policy, and the Court decreed it to be deliver'd up. *Trin.* 1692. *Abr. Cases in Equity* 371.

A Part-Owner of a Ship borrowed Money of the Plaintiff upon a *Bottomry*-Bond, payable on the Return of the Ship from the Voyage she was then going in the Service of the *East-India* Company, and they broke up
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the Ship in the *Indies*; then the Owners brought their Action against the Company, and recover'd Damages, but not amounting to a full Satisfaction: And thereupon the Obligee in the Bond exhibited his Bill in the *Chancery*, to have his proportionable Satisfaction out of the Money recovered; but the Bill was dismissed, and he left to recover as well as he could at Law; for a Court of Equity will never assist a Bottomry-Bond which carries an unreasonable Interest, *Mich.* 1701.

The *East-India* Company took Bonds from the Seamen and Officers of a Ship, not to demand their Wages, unless the Ship returned to the Port of *London*; and the Ship arrived at a delivering Port, but was afterwards taken by the *French*: It was held in *Chancery*, that the Seamen and Officers should have their Wages to the Time of the Arrival of the Ship at the delivering Port; notwithstanding the Bonds given. 2 *Vern.* 727.

OF THE JUDICIAL COMMISSION

the ship is the law. When the Commission
brought the action against the Commission
and received judgment, but not satisfaction
as a full satisfaction, and therefore the
Commissioner of the Bond (and not the
Commissioner) to have the responsibility
of the ship and the money recovered, but the
Bill was cancelled and is left to recover as
well as the money at law, for a Court of
Equity will never give a Bonding-Bond
which makes an unnecessary interest. Wm.

The Atlantic Company took Bonds from
the Bank and Officers of a ship, not to be
maneuvered, which the ship returned
to the Bank of London, and the ship arrived
at a delivery point, but was afterwards taken
by the Bank. It was held in *Commissioner*
that the Commission and Officers should have
their wages to the full of the arrival of
the ship at the delivery point, notwithstanding
the fact given.

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THE
TREATY
OF
PEACE *and* FRIENDSHIP

Between the Crowns of Great Britain and Spain, concluded at Madrid the 13th Day of May in the Year of our Lord 1667.

ENTER'D into and concluded by the Most Excellent Lord *Edward* Earl of *Sandwich*, Privy Counsellor to the Most Serene and Potent King of *Great Britain*, and his Embassador Extraordinary to *Spain*, in the Name of the Most Serene King his Master; and the Most Excellent Lords, Don *John Eberardo Nidardo*, Confessor to the Most Serene Catholick Queen, Inquisitor General and Counsellor of State, Don *Ramiro Phelipez Nunez de Guzman*, Duke of *San Lucar Mayor*, and of *Medina de las Torres*, Counsellor of State, and President of *Italy*, and Don *Gaspar of Bracamonte and Gusman*, Count of *Penaranda*, Counsellor of State, and President

A

2 **The Treaty of Peace, &c.**

sident of the *Indies*, in the Name of the Most Serene and Potent King and Queen of *Spain*, at *Madrid* the $\frac{1}{2}\frac{3}{4}$ Day of *May* 1667.

In the Name of the Most Holy Trinity, Father, Son, and Holy Ghost, Three distinct Persons, and One only True God.

ARTICLE I.

FIRST, it is agreed and concluded, That from this Day forward there shall be, between the Two Crowns of *Great Britain* and *Spain*, a General, Good, Sincere, True, Firm, and Perfect Amity, Confederation and Peace, which shall endure for ever, and be observ'd inviolably, as well by Land as by Sea and Fresh Waters; and also between the Lands, Countries, Kingdoms, Dominions and Territories, belonging unto, or under the Obedience of either of them. And that their Subjects, People, and Inhabitants respectively, of what Condition, Degree or Quality soever, from henceforth reciprocally, shall help, assist, and shew to one another all Manner of Love, good Offices and Friendship.

II.

That neither of the said Kings, nor their respective People, Subjects or Inhabitants within their Dominions, upon any Pretence, may in publick or secret, do, or procure to be done, any Thing against the other, in any Place, by Sea or Land, nor in the Ports or Rivers of the one or the other, but shall treat one another with all Love and Friendship;

The Treaty of Peace, &c. 3

ship, and may by Water and by Land, freely and securely pass into the Confines, Countries, Lands, Kingdoms, Islands, Dominions, Cities, Towns, Villages, Walled or or without Wall, Fortified or Unfortified, their Havens and Ports (where hitherto Trade and Commerce hath been accustomed) and there Trade, Buy and Sell, as well of and to the Inhabitants of the respective Places, as those of their own Nation, or any other Nation that shall be or come there.

III.

That the said Kings of *Great Britain* and *Spain*, shall take Care that their respective People and Subjects from henceforward do abstain from all Force, Violence or Wrong; and if any Injury shall be done by either of the said Kings, or by the People or Subjects of either of them, to the People or Subjects of the other, against the Articles of this Alliance, or against common Right, there shall not therefore be given Letters of Reprisal, Marque, or Counter-marque, by any of the Confederates, until such Time as Justice is sought and followed in the ordinary Course of Law. But if Justice be denied or delayed, then the King whose People or Inhabitants have received Harm, shall ask it of the other, by whom (as is said) the Justice shall have been denied or delayed, or of the Commissioners that shall be by the one King or the other appointed to receive and hear such Demands, to the End that all such Differences may be compounded in Friendship, or according to Law. But if there should

4 The Treaty of Peace, &c.

be yet a Delay, or Justice should not be done, nor Satisfaction given within Six Months after having the same so demanded, then may be given Letters of Reprisal, Marque or Counter-Marque.

IV.

That between the King of *Great Britain* and the King of *Spain*, and their respective People, Subjects and Inhabitants, as well upon Sea as upon Land, and fresh Waters, in all and every their Kingdoms, Lands, Countries, Dominions, Confines, Territories, Provinces, Islands, Plantations, Cities, Villages, Towns, Ports, Rivers, Creeks, Bays, Streights and Currents, where hitherto Trade and Commerce hath been accustomed, there shall be free Trade and Commerce, in such Way and Manner, that without safe Conduct, and without general or particular Licence, the People and Subjects of each other may freely, as well by Land as by Sea and Fresh-waters, Navigate and go into their said Countries, Kingdoms, Dominions, and all the Cities, Ports, Currents, Bays, Districts, and other Places thereof; and may enter into any Port with their Ships laden or empty, Carriage or Carriages wherein to bring their Merchandize, and there buy and sell what and how much they please, and also at just and reasonable Rates provide themselves with Provisions and other necessary Things for their Subsistence and Voyage; and also may repair their Ships and Carriages, and from thence again freely depart with their Ships, Carriages, Goods, Merchandize

The Treaty of Peace, &c. 5

chandize and Estate, and return to their own Countries, or to such other Places as they shall think fit, without any Molestation or Impediment, so that they pay the Duties and Customs which shall be due, and saving to either Side the Laws and Ordinances of their Country,

V.

Item, It is likewise agreed, That for the Merchandizes which the Subjects of the King of *Great Britain* shall buy in *Spain*, or other the Kingdoms or Dominions of the King of *Spain*, and shall carry in their own Ships, or in Ships hired or lent unto them, no new Customs, Toll, Tenths, Subsidies, or other Rights or Duties whatsoever, shall be taken or increased, other than those which in the like Case the Natives themselves, and all other Strangers are obliged to pay; and the Subjects aforesaid buying, selling and contracting for their Merchandizes, as well in respect of the Prices, as of all Duties to be paid, shall enjoy the same Privileges which are allowed to the natural Subjects of *Spain*; and may buy, and lade their Ships with such Goods and Merchandizes; which said Ships being laden, and Customs paid for the Goods, shall not be detained in Port upon any Pretence whatsoever; nor shall the Laders, Merchants, or Factors, who bought and loaded the Goods aforesaid, be questioned after the Departure of the said Ships, for any Matter or Thing whatsoever concerning the same.

VI.

And to the End that the Officers and Ministers of all Cities, Towns and Villages belonging to either, may neither demand nor take from the respective Merchants and People, greater Taxes, Duties, Stipends, Recompences, Gifts, or any other Charges, than what ought to be taken by Virtue of this Treaty; and that the said Merchants and People may know and understand with Certainty what is ordained in all Things touching this, It is agreed and concluded, That Tables and Lifts shall be put up at the Doors of the Custom-houses and Registries of all the Cities, Villages, and Towns of, or appertaining to one or the other King where such Rights and Excises or Customs are usually paid; in which, how much, and of what Quality such Rights, Customs, Subsidies and Payments, either to the Kings or any the aforesaid Officers are allowed, shall be put down in Writing, declaring as well the Species of what is Imported, as what is carried out. And if any Officer, or any other in his Name, upon any Pretence whatsoever, in publick or secret, directly or indirectly, shall ask or receive of any Merchant or other Person respectively, any Sum of Money or other Thing, by the Name of Right, Due, Stipend, Allowance or Recompence (though it be by the Way of voluntary Donative) more or otherwise than aforesaid, the said Officer or his Deputy being in such Manner guilty, and convict before a competent Judge in the Country where the Crime is committed,

ted, shall be put in Prison for Three Months, and shall pay thrice the Value of the Thing so received; of which the Half shall be for the King of the Country where the Crime is committed, and the other Half for the Denunciator, for the which he may sue his Right before any competent Judge of the Country where it shall happen.

VII.

That it shall be lawful for the Subjects of the King of *Great Britain* to bring out, and carry into *Spain*, and all or any Lands and Dominions of the King of *Spain* (where heretofore they have used Trade and Commerce) and Trade there with all Kind of Merchandize, Cloths, Manufactures, and Things of the Kingdom of *Great Britain*, and the Manufactures, Goods, Fruits, and Kinds of the Islands, Towns, and Plantations to him appertaining, and what shall have been bought by *English* Factors on this Side, or farther on the other Side of the Cape of *Buena Esperanca*, without being enforced to declare to whom, or for what Price they sell their said Merchandize and Provisions, or being molested for the Errors of the Masters of the Ships, or others, in the Entry of the Goods; and at their Pleasure to return again out of the Dominions of the King of *Spain*, with all, or any Goods, Estates and Merchandize, to any of the Territories, Islands, Dominions, and Countries of the King of *England*, or to any other Place, paying the Rights and Tributes mentioned in the antecedent Chapters; and the rest of all their Lading which is not

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brought to Land, they may detain, keep and carry away in their said Ship or Ships, Vessel or Vessels again, without paying any Right or Imposition whatsoever for it, as if therewith they had never been within any Bay or Port of the Catholick King. And all the Goods, Estates, Merchandize, Ships, or other Vessels, with any Things introduced into the Dominions or Places of the Crown of *Great Britain* as Prizes, and judged for such in the said Dominions and Places, shall be taken for Goods and Merchandize of *Great Britain*, comprehended so by the Intention of this Article.

VIII.

That the Subjects and Vassals of the Most Serene King of *Great Britain* may bring and carry to all and singular the Dominions of the King of *Spain*, any Fruits and Commodities of the *East-Indies*, it appearing by Testimony of the Deputies of the *East-India* Company in *London*, that they are of, or have come from the *English* Conquests, Plantations or Factories, with like Privilege, and according to what is allowed to the Subjects of the *United Provinces*, by the Royal *Cedulas* of *Contravando*, bearing Date the 27th of *June*, and the 3d of *July*, 1663, and published on the 30th of *June* and 4th of *July* the same Year. And for what may concern both the *Indies*, and any other Parts whatsoever, the Crown of *Spain* doth grant to the King of *Great Britain* and his Subjects, all that is granted to the United States of the *Low Countries* and their Subjects, in their Treaty of *Munster*

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Munster 1648, Point for Point, in as full and ample Manner as if the same were herein particularly inserted, the same Rules being to be observed whereunto the Subjects of the said United States are obliged, and mutual Offices of Friendship to be performed from one Side to the other.

IX.

That the Subjects of the King of *Great Britain*, Trading. Buying and Selling in any of the Kingdoms, Governments, Islands, Ports or Territories of the said King of *Spain*, shall have, use, and enjoy all the Privileges and Immunities which the said King hath granted and confirmed to the *English* Merchants that reside in *Andaluzia*, by his Royal *Cedulas* or Orders, dated the 19th Day of *March*, the 26th Day of *June*, and the 9th Day of *November*, 1645. His Catholick Majesty by these Presents reconfirming the same as a Part of this Treaty between the Two Crowns. And to the End that it be manifest to all, it is consented, That the said Schedules (as to the whole Substance thereof) be passed and transferred to the Body of the present Articles, in the Name and Favour of all and singular the Subjects of the King of *Great Britain*, Residing and Trading in any Places whatsoever within his Catholick Majesty's Dominions.

X.

That the Ships, or any other Vessels that shall belong to the King of *Great Britain*, or his Subjects, Navigating into the King of *Spain's*

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Spain's Dominions, or any of his Ports, shall not be visited by the Judges of Counterband, or by any other Officer or Person, by his own, or by any other Authority; nor shall any Soldiers, Armed Men, or other Officers or Persons be put on board any of the said Ships or Vessels; nor shall the Officers of the Custom-house of the one or the other Party, search in any Vessels or Ships belonging to the People of the one or the other, which shall enter into their Regions, Dominions, or respective Ports, until their said Ships or Vessels are unladen, or until they have carried on Shore all the Lading and Merchandize which they declare they resolve to disembark in the said Port; nor shall the Captain, Master, or any other of the Company of the said Ships be imprisoned, or they or their Boats detained on Shore; but in the Interim, Officers of the Custom-house may be put on board the said Vessels or Ships, so they exceed not the Number of Three for each Ship, to see that no Goods or Merchandize be Landed out of the said Ships or Vessels, without paying such Duties as by these Articles either Party is obliged to pay; which said Officers are to be without any Charge to the Ship or Ships, Vessel or Vessels, their Commanders, Mariners, Company, Merchants, Factors, or Proprietors. And when it happens that the Master or Owner of any Ship shall declare the whole Lading of his said Ship is to be discharged in any Port, the Entry of the said Lading shall be made in the Custom-house, after the usual Manner; and if
after

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after the Entry made, any other Goods be found in the said Ship or Ships, more than what are contained in the said Entry, eight working Days shall be allowed them on which they may work (which shall be reckoned from the Day they began to unlade) to the End that the concealed Goods may be entered, and the Confiscation of them prevented: And in case that in the Time limited, the Entry or Manifestation of them shall not have been made, then such particular Goods only, which shall be found, as aforesaid, though the Unlading be not finished, shall be confiscated, and not any other; nor shall other Trouble be given, or Punishment inflicted on the Merchant or Owner of the Ship; and when the Ships or Vessels are reladen, they may have Freedom to go out again.

XI.

That the Ship or Ships appertaining to the one or the other King, or to their respective People and Subjects, that shall enter into any Ports, Lands, or Dominions of the one or the other, and shall discharge any Part of their Goods and Merchandizes in any Port or Haven, being consigned with the rest to other Places within or without the said Dominions, shall not be obliged to register or pay the Rights of any other Goods or Merchandize, than of that which they shall unlade in the said Port or Haven, nor be constrained to give Bond for the Goods they shall carry to other Places, nor any other Security, if it be not in case of Felony, Debt, Treason, or other Capital Crime.

XII. Whereas

XII.

Whereas the one Moiety of the Custom of all foreign Goods and Merchandizes imported into *England*, is allowed and returned back to the Importer, if the said Goods be exported out of the said Kingdom within twelve Months after the first Landing, upon Oath made that they are the same Goods which paid Custom inwards, and that if they be not re-shipp'd within the said twelve Months, yet they may at all Times be exported without paying any Custom or Duty outwards: It is therefore agreed, That if any the Subjects of the King of *Great Britain* shall hereafter Land any Goods or Merchandize, of what Growth or Nature soever they be, in any of the Ports of his Catholick Majesty, and having entred them, and paid the Custom which by this Treaty ought to be paid, and shall afterwards desire to transport them, or any Part of them, to any other Place whatsoever, for a better Market, it shall and may be lawful for him or them so to do freely, without paying or being demanded any other Custom or Duty at all for the same, he or they making Oath, if required thereunto, that they are the same Goods for which Custom was paid at the Landing: And in case that the Subjects, People, and Inhabitants of the Dominions of either Part shall unlade, or have in any City, Town, or Village respectively, any Goods, Merchandizes, Fruits or Estates, and have paid the Customs due, according to what hath been declared, and after that, not being able to put them off, shall resolve to remit them
to

to some other City, Town, or Village of the said Dominions, they may not only do it without Difficulty or Impediment, and without paying other Rights than what were due at their Entry, but likewise the Custom or Rights shall not be paid again in any other Part of the said Dominions, bringing Certificates from the Officers of the Custom-house, that they were paid before in the due Form. And the chief Farmers and Commissioners of the King of *Spain's* Rents in all Places, or some other Officer or Officers to be appointed for that Purpose, shall at all Times permit and suffer the Transportation of all such Goods and Merchandizes from Place to Place, and give sufficient Certificate to the Owners thereof, or their Assigns, of their having paid their Custom at their first Landing, whereby they may be carried to, and landed at any other Port or Place of the said Jurisdiction, free from all Duties or Impediments whatsoever, as aforesaid, saving always the Right of any third Person.

XIII.

That it shall be lawful for the Ships belonging to the Subjects of the one or the other King, to anchor in the Roads or Bays of either, without being constrained to enter into Port; and in case they be necessitated to enter thereinto, either by Distress of Weather, Fear of Enemies, Pirates, or any other Accident, in case the said Ships be not bound to an Enemy's Port, and carrying thither Contraband Goods (whereof without some clear Proof, they shall not be questioned) it shall

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shall be lawful for the said Subjects to return to Sea freely when they please, with their Ships and Goods, so as they do not break Bulk, or expose any Thing to Sale; and that when they cast Anchor, or enter the Ports aforesaid, they be not molested or visited; and it shall suffice, that in this Case they shew their Passports, or Sea-Papers, which being seen by the respective Officers of either King, the said Ships shall return freely to Sea without any Molestation.

XIV.

And if any Ship or Ships belonging to the Subjects and Merchants of the one or the other, entring into Bays, or in the open Sea, shall be encountred by the Ships of the said Kings, or of Privateers their Subjects; the said Ships, to prevent all Disorders, shall not come within Cannon-shot, but shall send their Long-Boat, or Pinnace, to the Merchant-Ship, and only two or three Men on board, to whom the Master or Owner shall shew his Passports and Sea-Letters, according to the Form which shall be inserted at the End of this Treaty, whereby not only the Ship's Lading, but the Place to which she belongs, and as well the Master and Owner's Name, as the Name of the Ship, may appear; by which Means the Quality of the Ship, and her Master or Owner will be sufficiently known, as also the Commodities she carries, whether they be contraband, or not; to the which Passports and Sea-Letters intire Faith and Credit shall be given, so much the rather, for that as well on the Part of the King
of

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of *England*, as of the King of *Spain*, some Counter-signs shall be given (if it shall be found necessary) whereby their Authenticalness may the better appear, and that they may not be in any wise falsified.

XV.

If any prohibited Merchandize or Goods shall be exported from the Kingdoms, Dominions, and Territories of either of the said Kings, by the respective People or Subjects of the one or the other, in such case the prohibited Goods shall be only confiscated, and not the other Goods; neither shall the Delinquent incur any other Punishment, except the said Delinquent shall carry out from the respective Kingdoms or Dominions of the King of *Great Britain*, the proper Coin, Wool, or Fullers Earth of the said Kingdoms; or shall carry out of the respective Kingdoms or Dominions of the said King of *Spain*, any Gold or Silver, wrought or unwrought; in either of which Cases the Laws of the respective Countries are to take Place.

XVI.

That it shall be lawful for the People and Subjects of both Kings, to have Access to the respective Ports of the one and the other, and there remain, and depart again with the same Freedom, not only with their Ships, and other Vessels for Trade and Commerce, but also with their other Ships fitted for War, Armed, and disposed to resist and engage the Enemy, and arriving by Stress of Weather to repair their Ships, or furnish themselves

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themselves with Provisions; so that entering willingly, they be not so numerous, that they give just Occasion of Suspicion, to which End they are not to exceed the Number of eight, nor continue in their Havens, nor about their Ports, longer Time than they shall have just Cause, for the Repair of their Ships, to take in Provisions, or other necessary Things, much less be the Occasion of interrupting the free Commerce, and coming in of other Ships, of Nations in Amity with either King; and when an unusual Number of Men of War by Accident shall come unto any Port, it shall not be lawful for them to come into the said Ports or Havens; not having first obtained Permission of the King unto whom the said Ports do belong or the Governors of the said Ports, if they be not forced thereinto by Stress of Weather, or other Necessity, to avoid the Danger of the Sea; and in such Case they shall presently acquaint the Governor or Chief Magistrate of the Place with the Cause of their coming; nor shall they remain there any longer Time than the said Governor or Magistrate shall think convenient, or do any Act of Hostility in such Ports, that may prove of Prejudice to the one or the other of the said Kings.

XVII.

That neither the said King of *Great Britain*, nor the King of *Spain*, by any Mandate general, nor particular, nor for any Cause whatsoever, shall embark or detain, hinder or take for his respective Service, any Merchant,

chant, Master of a Ship, Pilot or Mariner, their Ships, Merchandize, Cloaths or other Goods belonging unto the one or the other, in their Ports or Waters, if it be not that either of the said Kings, or the Persons to whom the Ships belong, be first advertised thereof, and do agree thereunto; Provided, that this shall not be construed to hinder or interrupt the ordinary Course of Justice and Law in either Country.

XVIII.

That the Merchants and Subjects of the one and the other King, their Factors and Servants, as also their Ships, Masters or Mariners, may as well going as coming, upon Sea and other Waters, as in the Havens and Ports of the one and the other respectively, carry and use all kind of Arms, Defensive and Offensive, without being obliged to register them, as also upon Land to carry and use them for their Defence, according to the Custom of the Place.

XIX.

That the Captains, Officers and Mariners of the Ships belonging to the People and Subjects of either Party, may not commence an Action, nor hinder or bring Trouble upon their own Ships, their Captains, Officers or Mariners, in the respective Kingdoms, Dominions, Lands, Countries or Places of the other, for their Wages or Salaries, or under any other Pretence. Nor may they put themselves, or be received, by what Pretext or Colour soever, into the Service or Protec-

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tion of the King of *England*, or King of *Spain*, or their Arms; but if any Controversy happen between Merchants and Masters of Ships, or between Masters and Mariners, the composing thereof shall be left to the Consul of the Nation, but after such Manner, as he who shall not submit to the Arbitrament, may appeal to the ordinary Justice of the Place where he is subject.

XX.

And to the End that all Impediments be taken away, and that the Merchants and Adventurers of the Kingdoms of *Great Britain* be permitted to return to *Brabant*, *Flanders*, and other the Provinces of the *Low-Countries*, under the Jurisdiction of the King of *Spain*; Forasmuch as it hath been thought convenient, that all, and any the Laws, Edicts, and Acts, by which the Importation of Cloth, or any Cloth, or any other Woollen Manufacture, of what Kind soever, dyed or undyed, mill'd or unmill'd, into *Flanders*, or the other Provinces, hath been prohibited, be revoked and disannulled; and that if any Right, Tribute, Imposition, Charge or Money, hath been, with Permission, or otherwise, put upon Cloths, or any of the afore-said Woollen Manufactures so imported (except the ancient Tribute upon every Piece of Cloth, and proportionably upon every other Woollen Manufacture, agreeable to the ancient Treaties and Agreements between the then Kings of *England*, and the Dukes of *Burgundy*, and Governors of the *Low-Countries*) the same should be altogether void,
and

and no such Tribute or Imposition from henceforth imposed, or put upon the said Cloths or Manufactures, for any Cause or Pretext whatsoever: And that all the *English* Merchants, Trading in any of the said Provinces, their Factors, Servants, or Commissioners, should enjoy from henceforward, all the Privileges, Exemptions, Immunities and Benefits, which formerly have been agreed and given by the aforesaid ancient Treaties and Agreements between the then Kings of *England* and the Dukes of *Burgundy*, and Governors of the *Low-Countries*: It is therefore agreed, That Deputies shall be named by the King of *Great Britain*, who meeting with the Marquess of *Castel-Rodrigo*, or the Governor of those Provinces for the Time being, or any other Ministers of the King of *Spain*, sufficiently authorized in this Behalf, shall friendly treat and conclude hereupon; and also such further Privileges, Immunities, and necessary Exemption, suitable to the present State of Affairs, shall be granted for the Encouragement of the said Merchants and Adventurers, and for the Security of their Trade and Commerce, as shall be agreed upon in a special Treaty, that shall be made between both the Kings, touching this Particular.

XXI.

The Subjects and Inhabitants of the Kingdoms and Dominions of the Most Serene King of *Great Britain* and *Spain* respectively, shall with all Security and Liberty Sail to, and Traffick in all the Kingdoms, Estates

or Countries, which are or shall be in Peace, Amity, or Neutrality with the one or the other.

XXII.

And they shall not be disturbed or disquieted in that Liberty, by the Ships or Subjects of the said Kings respectively, by reason of the Hostilities which are or may be hereafter between either of the said Kings, and the aforesaid Kingdoms, Countries and States, or any of them, which shall be in Friendship or Neutrality with the other.

XXIII.

And in case that within the said Ships respectively, be found by the abovesaid Means, any Merchandize hereunder mentioned, being of Contraband, and Prohibited, they shall be taken out and confiscated, before the Admiralty, or other competent Judges; but for this Reason the Ship, and the other free and allowed Commodities which shall be found therein, shall in no wise be either seized or confiscated.

XXIV.

Moreover, for better Prevention of the Differences which might arise touching the Meaning of forbidden Merchandize, and of Contraband; It is declared and agreed, That under this Name shall be comprehended all Fire-Arms, as Ordnance, Musquets, Mortar-Pieces, Petards, Bombs, Granadoes, Fire-crancels, Fire-balls, Musquet-rests, Banderliers, Gunpowder, Match, Salt-petre, and Bullets: Likewise under the Name of forbidden

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bidden Merchandize, are understood all other Arms, as Pikes, Swords, Pots, Helmets, Backs and Breasts, Halberds, Javelins, and such like Armour: Under this Name is likewise forbidden the Transportation of Soldiers, Horses, their Harnesses, Cases of Pistols, Holsters, Belts, and other Furniture, formed, and composed for the Use of War.

XXV.

Likewise, to prevent all Manner of Dispute and Contention, It is agreed, That under the Name of forbidden Merchandize, and of Contraband, shall not be comprehended Wheat, Rye, Barley, or other Grains, or Pulse, Salt, Wine, Oyl, and generally whatsoever belongs to the sustaining and nourishing of Life, but they shall remain free, as likewise all other Merchandizes not comprehended in the preceding Articles; and the Transportation of them shall be free and permitted, although it be to the Towns and Places of Enemies, unless such Towns and Places be besieged, and blocked up, or surrounded.

XXVI.

It is also agreed, That whatsoever shall be found laden by the Subjects or Inhabitants of the Kingdoms and Dominions of either of the said Kings of *England* and *Spain* aboard the Ships of the Enemies of the other, though it be not forbidden Merchandize, shall be confiscated, with all Things else which shall be found within the said Ships, without Exception or Reserve.

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XXVII.

That the Consul which hereafter shall reside in any of the Dominions of the King of *Spain*, for the Help and Protection of the Subjects of the King of *Great Britain*, shall be named by the King of *Great Britain*, and he so named shall have and exercise the same Power and Authority in the Execution of his Charge, as any other Consul hath formerly had in the Dominions of the said King of *Spain*; and in like Manner the *Spanish* Consul residing in *England*, shall enjoy as much Authority as the Consuls of any other Nation have hitherto enjoyed in that Kingdom.

XXVIII.

And that the Laws of Commerce that are obtained by Peace, may not remain unfruitful, as would fall out if the Subjects of the King of *Great Britain*, when they go to, come from, or remain in the Dominions or Lordships of the King of *Spain*, by Reason of their Commerce or other Business, should be molested for Cause of Conscience; therefore that the Commerce be secure, and without Danger, as well upon Land as Sea, the said King of *Spain* shall provide, that the Subjects of the said King of *Great Britain* shall not be agrieved contrary to the Laws of Commerce, and that none of them shall be molested or disturbed for their Conscience, so long as they give no publick Scandal or Offence: And the said King of *Great Britain* shall likewise provide, for the same Reasons, that the Subjects of the King of *Spain* shall not be molested or disturbed for their Conscience

science against the Laws of Commerce, so long as they give no publick Scandal or Offence.

XXIX.

That the People and Subjects respectively of one Kingdom, in the Dominions, Territories, Regions, or Colonies of the other, shall not be compelled to sell their Merchandize for Brass-metal Coin, or exchange them for other Coin or Things, against their Will; or having sold them, to receive the Payment in other Species than what they bargained for, notwithstanding any Law or other Custom contrary to this Article.

XXX.

That the Merchants of both Nations, and their Factors, Servants, and Families, Commissioners, or others by them employed; as also Masters of Ships, Pilots, and Mariners, may remain freely and securely in the said Dominions, Kingdoms, and Territories, of either of the said Kings, and also in their Ports and Rivers; and the People and Subjects of the one King, may have, and with all Freedom and Security enjoy, in all the Lands and Dominions whatsoever of the other, their proper Houses to live in, their Ware-houses and Magazines for their Goods and Merchandize, which they shall possess during the Time for which they shall have taken, hired, and agreed for them, without any Impediment.

XXXI.

The Inhabitants and Subjects of the said Confederate Kings, in all the Lands and Places under the Obedience of the one or the other, shall use and employ those Advocates, Proctors, Scriveners, Agents and Solicitors, whom they think fit, the which shall be left to their Choice, and consented to by the ordinary Judges, as often as there shall be Occasion; and they shall not be constrained to shew their Books and Papers of Account to any Person, if it be not to give Evidence for the avoiding Law Suits and Controversies; neither shall they be embarked, detained, or taken out of their Hands, upon any Pretence whatsoever. And it shall be permitted to the People and Subjects of either King, in the respective Places where they shall reside, to keep their Books of Account, Traffick and Correspondence in what Language they please, in *English, Spanish, Dutch*, or any other, the which shall not be molested, or subject to any Inquisition. And whatsoever else hath been granted by either Party, concerning this Particular, to any other Nation, shall be understood likewise to be granted here.

XXXII.

That in case the Estate of any Person or Persons shall be sequestred or seised on by any Court of Justice or Tribunal whatsoever, within the Kingdoms and Dominions of either Party, and any Estate or Debt happen to lie in the Hands of the Delinquents belonging *bona fide* to the People and Subjects
of

of the other, the said Estate or Debts shall not be confiscated by any of the said Tribunals, but shall be restored to the true Owners *in specie*, if they yet remain, and if not, the Value of them (according to the Contract and Agreement which was made between the Parties) shall be restored within Three Months after the said Sequestration.

XXXIII.

That the Goods and Estates of the People and Subjects of the one King, that shall die in the Countries, Lands, and Dominions of the other, shall be preserved for the lawful Heirs and Successors of the deceased; the Right of any Third Person always reserved.

XXXIV.

That the Goods and Estates of the Subjects of the King of *Great Britain*, that shall die without making a Will in the Dominions of the King of *Spain*, shall be put into Inventory, with their Papers, Writings, and Books of Account, by the Consul or other publick Minister of the King of *Great Britain*, and deposited in the Hands of Two or Three Merchants, that shall be named by the said Consul or publick Minister, to be kept for the Proprietors and Creditors; and neither the *Cruzada*, nor any other Judicatory whatsoever, shall intermeddle therein; which also in the like Case shall be observed in *England* towards the Subjects of the King of *Spain*.

XXXV.

XXXV.

That a decent and convenient Burial-place shall be granted and appointed to bury the Bodies of the Subjects of the King of *Great Britain*, who shall die within the Dominions of the King of *Spain*.

XXXVI.

If it shall happen hereafter that any Difference fall out (which God forbid) between the King of *Great Britain* and the King of *Spain*, whereby the mutual Commerce and good Correspondence may be endangered, the respective Subjects and People of each Party shall have Notice thereof given them in Time, that is to say, the Space of six Months, to transport their Merchandize and Effects, without giving them in that Time any Molestation or Trouble, or retaining or embarking their Goods or Persons.

XXXVII.

All Goods and Rights concealed or embarked, Moveables, Immoveables, Rents, Deeds, Debts, Credits, and the like, which have not, with a formal Notice of the Cause, and by a legal Condemnation, according to the Ordinary Justice, been brought into the Royal Exchequer at the Time of concluding this Treaty, shall remain at the full and free Disposal of the Proprietors, their Heirs, or of those who shall have their Right, with all the Fruits, Rents and Emoluments thereof, and neither those who have concealed the said Goods, nor their Heirs shall be molested for this Cause by the Exchequers and Executor respec-

respectively; but the Proprietors, their Heirs, or those who shall have their Right, shall have for the said Goods and Rights their Action at Law, as for their own proper Goods and Estate.

XXXVIII.

It is agreed and concluded, That the People and Subjects of the King of *Great Britain*, and of the King of *Spain*, shall have and enjoy in the respective Lands, Seas, Ports, Havens, Roads and Territories of the one or the other, and in all Places whatsoever, the same Privileges, Securities, Liberties and Immunities, whether they concern their Persons or Trade, with all the beneficial Clauses and Circumstances which have been granted, or shall be hereafter granted by either of the said Kings, to the Most Christian King, the States General of the *United Provinces*, the *Hans-Towns*, or any other Kingdom or State whatsoever, in as full, ample, and beneficial Manner, as if the same were particularly mentioned and inserted in this Treaty.

XXXIX.

In case any Difference or Dispute shall happen on either Side concerning these Articles of Trade and Commerce, by either the Officers of the Admiralty or other Person whatsoever, in the one or the other Kingdom; the Complaint being presented by the Party concerned, to their Majesties, or to any of their Council, their said Majesties shall cause the Damages forthwith to be repaired, and all Things, as they are above Agreed, to be duly

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duly executed; And in case that in progress of time any Frauds or Inconveniencies be discovered in the Navigation and Commerce between both Kingdoms, against which sufficient Prevention hath not been made in these Articles, other Provisions may be hereafter mutually Agreed on, as shall be judged convenient, the present Treaty remaining still in full Force and Vigour.

XL.

It is likewise Accorded and Concluded, That the Most Serene and Renowned Kings of *Great Britain* and *Spain* shall sincerely and faithfully observe and keep, and procure to be observed and kept, by their Subjects and Inhabitants respectively, all and singular the Capitulations in this present Treaty Agreed and Concluded, neither shall they directly or indirectly infringe the same, or consent that the same shall be infringed by any of their Subjects or Inhabitants. And they shall Ratifie and Confirm all and singular the Conventions before Accorded by Letters Patents reciprocally, in sufficient, full and effectual Form, and the same so formed and made, shall interchangeably deliver, or cause to be delivered faithfully and really, within Four Months after the Date of these Presents; and they shall then, as soon as conveniently may be, cause this present Treaty of Peace and Amity to be published in all Places, and in the manner accustomed.

In Witness whereof, we the above mentioned Ambassador Extraordinary of the Most
Serene

The Treaty of Peace, &c. 29

Serene King of *Great Britain*, and the Commissioners of the Most Serene King and Queen of *Spain*, have put our Seals to this present Treaty, subscribed with Our own Hands, at *Madrid* the $\frac{1}{2}\frac{1}{2}$ Day of *May* in the Year 1667.

(L. S.) *Sandwich*. (L. S.) *J. Eberardo Nidardo*.

(L. S.) *Duc. de St. Lucar*, &c. (L. S.) *Conde de Penaranda*.

A TREATY

A
T R E A T Y
F O R

Composing of Differences, restraining of Depredations, and establishing of Peace in America, between the Crowns of GREAT BRITAIN and SPAIN, concluded at MADRID the $\frac{3}{14}$ Day of July in the Year, of the Lord 1670.

Preface. **W**HEREAS for many Years past, the good Understanding and Correspondence between the *English* and *Spanish* Nations having been disturb'd in *America*, It pleased the Most Serene and Powerful Prince *Charles*, King of *Great Britain*, &c. in order to the restoring and regulating the same, for the future, to send into *Spain* his Envoy Extraordinary, Sir *William Godolphin*, Knt. with full Authority and Power to make any Treaty convenient and proper for that End: And likewise the Most Serene and Powerful Prince *Charles* King of *Spain*, &c. and the Queen Regent *Maria Anna*, &c. for the carrying on
a Work

a Work of so much Piety and publick Good, deputed on their Part the Earl of *Penaranda*, Counsellor of State and President of the *Indies*, to Confer, Treat and Conclude thereupon with the said Sir *William Godolphin*: At length they mutually resolved and agreed upon the Articles of the following Treaty in Virtue of their several Commissions.

ARTICLE I.

FIRST, It is agreed between the abovementioned Plenipotentiaries, Sir *William Godolphin* and the Earl of *Penaranda*, in the Names of the Most Serene Kings respectively, their Masters, That the Articles of Peace and Alliance made between the Crowns of *Great Britain* and *Spain* in *Madrid*, on the $\frac{1}{3}$ of May 1667, or any Clause thereof, shall in no Manner be deemed or understood to be taken away or abrogated by this present Treaty; but that the same shall remain perpetually in their ancient Force, Stability and Vigour so far forth as they are not contrary or repugnant to this present Convention and Articles, or to any Thing therein contained.

The Treaty of 1667 confirmed.

II.

That there be an universal Peace, true and sincere Amity in *America* as in the other Parts of the World, between the Most Serene Kings of *Great Britain* and *Spain*, their Heirs and Successors, and between the Kingdoms, States, Plantations, Colonies, Forts, Cities, Islands and Dominions,

An universal Peace as well in *America* as elsewhere.

nions, without any Distinction of Place belonging unto either of them, and between the People and Inhabitants under their respective Obedience, which shall endure from this Day for ever, and be observed inviolably, as well by Land as by Sea and fresh Waters, so as to promote each the Welfare and Advantage of the other, and favour and assist one another with mutual Love; and that every where, as well in those remote Countries as in these which are nearer, the faithful Offices of good Neighbourhood and Friendship may be exercised and increase between them.

III.

All Enmities and Depredations to cease.

Also, that for the Time to come, all Enmities, Hostilities and Discords between the said Kings, their Subjects and Inhabitants cease and be abolished, and that both Parties do altogether forbear and abstain from all Plundering, Depredation, Injuries and Infestation whatsoever, as well by Land as by Sea, and in Fresh Waters every where.

IV.

Letters of Mart revoked.

The said Most Serene Kings shall take Care that their Subjects do accordingly abstain from all Force and Wrong Doing : And they shall revoke all Commissions and Letters of Repri-
sal and Mart, or otherwise containing Licence soever to take Prizes of what Condition or Kind, being to the Prejudice of one or other of the said Kings, or of their Subjects, whether

ther the same have been given or granted by them unto Subjects or Inhabitants, or unto Strangers, and shall declare the same to be void and of no Force, as by this Treaty of Peace they are declared so to be: And whosoever shall do any Thing to the contrary, he shall be punished not only criminally according to the Merit of his Offence, but shall also be compell'd to make Restitution and Satisfaction for the Losses to the Parties damnified requiring the same,

Restitution
for Losses con-
trary to this
Treaty.

V.

And furthermore, the said Kings shall dencounce, as by the Tenor of these Presents every of them hath and doth denounce whatsoever League, Confederation, Capitulation and Intelligence, made by what Manner soever in the Prejudice of the one or the other, which doth or may repugn against this Peace and Concord, and all and singular the Contents thereof: All which and every of them, so far as they do concern the Effect aforesaid, they shall annul and make void, and declare to be of no Force or Moment.

Renunciation
of all Leagues,
&c. contrary
to this Peace.

VI.

The Prisoners of both Sides, one and all, of what Degree or Condition soever, detained by Reason of any Hostilities hitherto committed in *America*, shall be forthwith set at Li-

Prisoners re-
leased.

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berty without Ransom, or any other Price of their Freedom.

VII.

All Injuries to be forgotten.

All Offences, Damages, Losses or Injuries which the Nations and People of *Great Britain* and *Spain*, have at any Time heretofore upon what Cause or Pretext soever, suffer'd by each other in *America*, shall be expunged out of Remembrance and buried in Oblivion, as if no such Thing had ever past.

Englisht to keep what they possess at present in *America*.

Moreover it is agreed, That the Most Serene King of *Great Britain*, his Heirs and Successors, shall have, hold, keep and enjoy for ever, with plenary Right or Sovereignty, Dominion, Possession and Propriety, all those Lands, Regions, Islands, Colonies and Places whatsoever, being or situated in the *West-Indies*, or in any Part of *America*, which the said King of *Great Britain* and his Subjects do at present hold and possess, so as that in Regard thereof, or upon any Colour or Pretence whatsoever, nothing more may or ought to be urged, nor any Question or Controversy be ever moved concerning the same hereafter.

VIII.

Sailing to or Trading in each others Ports in *America* forbidden.

The Subjects and Inhabitants, Merchants, Captains, Masters of Ships, Mariners of the Kingdoms, Provinces and Dominions of each Confederate respectively, shall abstain and forbear to Sail and Trade in the Ports and Havens which have Fortifications,

cations, Castles, Magazines or Ware-houses, and in all other Places whatsoever, possess'd by the other Party in the *West-Indies*; to wit, The Subjects of the King of *Great Britain*, shall not Sail unto and Trade in the Havens and Places which the Catholick King holdeth in the said *Indies*: Nor in the like Manner shall the Subjects of the King of *Spain* Sail unto, or Trade in those Places which are possess'd there by the King of *Great Britain*.

IX.

But if at any Time hereafter either King shall think fit to grant unto the Subjects of the other, any general or particular Licence or Privileges of Navigating unto and Trading in any Places under his Obedience, who shall grant the same, the said Navigation and Trade shall be exercised and maintained according to the Form, Tenor and Effect of the said Permissions or Privileges to be allowed and given; for the Security, Warrant and Authority whereof, this present Treaty and the Ratification thereof shall serve.

X.

It is also agreed, That in Case the Subjects and Inhabitants of either of the Confederates, with their Shipping (whether publick and of War, or private and of Merchants) be forced at any Time by Strefs of Weather, Pursuit of Pirates and Enemies, or other Inconvenience whatsoever,

In case the Ships of either Party be forced into the others Harbours in *America*, they shall be protected and have leave to buy Victuals and freely go away again.

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for the seeking of Shelter and Harbour to retreat and enter into any of the Rivers, Creeks, Bays, Havens, Roads, Shores and Ports belonging to the other in *America*, they shall be received and treated there with all Humanity and Kindness, and enjoy all friendly Protection and Help. And it shall be lawful for them to refresh and provide themselves at reasonable and the usual Rates, with Victuals and all Things needful, either for the Sustenance of their Persons, or Reparation of their Ships, and Conveniency of their Voyage: And they shall in no manner be detained or hindred from returning out of the said Port or Roads, but shall remove and depart, when and whither they please, without any Let or Impediment.

XI.

In case of Shipwreck, Persons saved not to be taken Prisoners.

Likewise if either Ships belonging to either Confederate, their People and Subjects shall within the Coasts or Dominions of the other, stick upon the Sands, or be wreck'd, (which God forbid) or suffer any Damage, the Persons Shipwreck'd and cast on the Shore shall in no sort be kept Prisoners; but on the contrary, all friendly Assistance and Relief shall be administered to their Distress, and Letters of Safe Conduct given them for their free and quiet Passage thence, and the Return of every one to his own Country.

XII. But

XII.

But when it shall happen, that the Ships of either, (as is above-mention'd) through the Danger of the Sea, or other urgent Cause, be driven into the Ports and Havens of the other, if they be three or four together, and may give just Ground of Suspicion, they shall immediately, upon their Arrival, acquaint the Governor or Chief Magistrate of the Place, with the Cause of their coming, and shall stay no longer than the said Governor or Chief Magistrate will permit, and shall be requisite for the furnishing themselves with the Victuals and Reparation of their Ships. And they shall always take care not to carry out of their Ships any Goods or Packs, exposing them to Sale; neither shall they receive any Merchandize on board, nor do any Thing contrary to this Treaty.

In case three or four Ships come together into any Port, not to stay without Leave from the Governor, nor to Trade.

XIII.

Both Parties shall truly and firmly observe and execute this present Treaty, and all and every the Matters therein contained, and effectually cause the same to be observed and performed by the Subjects and Inhabitants of either Nation.

Both Parties shall cause this Treaty to be kept.

XIV.

No private Injury shall in any sort weaken this Treaty, nor beget Hatred or Dissentions between the aforesaid Nations, but every one shall answer for his

No Reprisals but in case of denying or unreasonably delaying Justice.

own

own proper Fact, and be prosecuted there-upon; neither shall one Man satisfy for the Offence of another by Reprisals, or other such like odious Proceedings, unless Justice be denied or unreasonably be delayed, in which case it shall be lawful for that King, whose Subject hath suffered the Loss and Injury, to take any Course according to the Rules and Method of the Law of Nations, until Reparation be made to the Sufferer.

XV.

This Treaty
not to pre-
judice either
Dominions in
those Seas.

The present Treaty shall in nothing derogate from any Pre-eminence, Right or Dominion of either Confederate in the *American* Seas, Channels or Waters, but that they have and retain the same in as full and ample a Manner as may of Right belong unto them: But it is always to be understood, that the Liberty of Navigation ought in no Manner to be disturbed, where nothing is committed against the genuine Sense and Meaning of these Articles.

XVI.

Ratification.

Lastly, The solemn Ratifications of the present Treaty and Agreement, made in due Form, shall be deliver'd on both Sides, and mutually exchanged within the Space of four Months from this Day, and within eight Months to be computed from the said Exchange of the Instruments, (or sooner if possible;) they shall be publish'd in all convenient Places throughout the Kingdoms, States, Islands and Dom-
nions

nions of both Confederates, as well in the
West-Indies as elsewhere.

In Testimony of all and singular the Con-
tents hereof, We the abovemention'd
Plenipotentiaries have sign'd and seal'd
this present Treaty at *Madrid* the $\frac{3}{11}$
Day of *July* in the Year of our Lord
1670.

The Court of
Penaranda,
L.S.

Wm. Godolphin,
L. S.

Ex. H. A. A.

F I N I S.